FILED
FEB 5 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1264

BETTY M. ALLEN, a/k/a BETTY J. MINDER
AND
RICHARD P. ALLEN

Petitioners

v.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Respondent

PETITION FOR WRIT OF CERTIORARI TO DISTRICT OF COLUMBIA COURT OF APPEALS AND SUPERIOR COURT OF D. C.

Action Pro Se
by Petitioners
560 N Street, S. W.
(N–109)
Washington, D. C. 20024
Phone: (202) 554-4867

BEACON PRINTING - 293-7160 - Washington, D.C. 20036

TABLE OF CONTENTS

	Page
PREMISE	2
OPINION BELOW	2
JURISDICTION	3
QUESTIONS PRESENTED	4
CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	5
I. Background	5
II. Litigation	6
III. Appeal	7
IV. Petition for Rehearing	8
REASONS FOR GRANTING WRIT	
I. Introduction	8
II. Conflicts in Lower Court Decisions	8
III. Consequences	10
CONCLUSION	10
RELIEF REQUESTED	11
CERTIFICATE OF SERVICE	
INDEX OF APPENDICES	12
APPENDICES	13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

BETTY M. ALLEN, a/k/a BETTY J. MINDER
AND
RICHARD P. ALLEN

Petitioners

v.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Respondent

PETITION FOR WRIT OF CERTIORARI TO DISTRICT OF COLUMBIA COURT OF APPEALS AND SUPERIOR COURT OF D. C.

PREMISE

The Petitioners, Richard P. and Betty M. Allen, respectfully pray that this notice of appeal from the summary denial of our previous petition to lower courts of jurisdiction be docketed and that a Writ of Certiorari be issued for review of proceedings in inferior courts, as well as opinions and decisions set forth therein by the Superior Court of the District of Columbia before the Honorable W. Byron Sorrell, CA5670-71, filed June 28, 1972, and by the District of Columbia Court of Appeals before Associate Judges Fickling and Nebeker, and Quinn, Associate Judge, Retired, No. 6816, filed on November 7, 1973. (See Appendix)

This action is being taken pro se because the attorney for the petitioners has dismissed himself from the case. The petitioners therefore pray the indulgence of the Court for any deviation from standard protocol or format in this Petition.

OPINION BELOW

In the Opinion of the Honorable W. Byron Sorrell, Superior Court of D.C., the surcharge on subleasing levied by the respondents on the petitioners was considered *reasonable* and thereby confirmed, ordering petitioners to pay the penalty. The Honorable Tim Murphy, Superior Court of D.C., ruled to the contrary on the same issue in another case involving the same respondents in litigation against another owner-member of the cooperative held in question, to the effect that the contract should hold over conflicting House Rules, no matter how *reasonable* the infringement might be on equity rights guaranteed by the Mutual Ownership Contract.

The Honorable John R. Hess, Superior Court of D.C., supported the opinion of Judge Tim Murphy, Superior Court of D.C., reaffirming the contract as the sole repository of equity rights, and denying the validity of any House Rule or Regulation which in effect modifies existing property rights of a member under the original Mutual Ownership Contract, regardless of how *reasonable* it may be.

The D.C. Court of Appeals simply reaffirmed the lower court decisions of Judges Sorrell and Murphy, even though opposite in decision, on the same issue, in the same area of jurisdiction, involving the same respondent but different petitioners, both of whom are owner-members in the same cooperative housing association.

The opinions of the Superior Court of D.C. expressed by the Honorable W. Byron Sorrell in his judgment filed on June 28, 1972 were cited in error on a number of grounds by the petitioners and are a matter of record, all of which is on file with the Court of Appeals but not acknowledged in its order of denial. (See Statement of the Case, CA 5670-71) The action in appeal to the D.C. Court of Appeals No. 6816, was denied *per curiam* October 2, 1973, by a Clerk of the Court, Alexander Stevas, in which he "ordered and adjudged that the judgment of the Superior Court of D.C. in this cause be, and it hereby is, affirmed."

In response to a Petition for Rehearing to the D.C. Court entered in the record on November 5, 1973, Mr. Stevas again denied petitioners' request to the D.C. Court of Appeals by the following order: "On consideration of appellants' petition for rehearing, it is ORDERED that appellants' petition is denied." It will be noted here that the judgment and decision of the court was signed not by a Judge of the Court but by a Clerk of the Court, and that no reason was given for denial of Petition for Rehearing nor was reason given for denial of original appeal in this case.

JURISDICTION

The petitioners, having sought relief from wrongs committed by respondent agents against them, and having exhausted normal legal channels for redress, it is believed by the petitioners that the Supreme Court of the United States now has jurisdiction.

This question is particularly important for a Supreme Court decision because of diametrically conflicting decisions made on an identical issue before inferior courts at the Superior Court level in the District of Columbia.

This Court's jurisdiction is therefore invoked as appropriate to the balance of justice not only in this particular case, but for all Cooperative Housing Associations and Condominiums nationwide in the future for which there now exists no definitive public law protecting the equity rights of individual owners against the abuse of power by cooperative or condominium management.

The crux of the matter involves the discipline of Contract Law and basic property rights in equity rather than laws governing landlord and tenant relationships.

QUESTIONS PRESENTED

(1) Were the petitioners' contractual rights recognized in decisions made by lower courts?

(2) Do minutes of a Cooperative's Board of Directors meeting constitute an amendment of a contract?

(3) Should "house rules" of a Cooperative Housing Association adopted by a pro tempore Board of Directors be permitted any legal standing if in conflict with the Mutual Ownership Contract between the owner-member and the Association, regardless of how *reasonable* the degree of abridgment of equity rights guaranteed in perpetuity by said contract?

(4) Should not any ambiguity in said contract be interpreted in favor of the contractee, in this case the petitioners, if the adverse interpretation would in effect nullify or infringe on the equity rights of the individual owner-member affected thereby?

(5) Must not the Judge consider *unrebutted* testimony in reaching his conclusions?

(6) If a random term is incorporated by reference in the contract, is the burden of proof on the person who is relying on it, or on the Association attempting to enforce it?

(7) What is the standard for sufficiency of evidence and if not shown, how can the Judge use it? (For example, the published nature of an alleged house rule, particularly in the event of conflict with an existing Mutual Ownership Contract.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 3, Section 2 of the Constitution of the United States is involved, conferring upon the Supreme Court the judicial power in all cases in law and equity wherein there is controversy between the states in such matters, or when lower courts have taken opposite positions in almost identical cases in the absence of statutory law governing the matter. Also, Article IV of the Bill of Rights is involved in this case which prohibits unreasonable search and seizures of personal property by another. Statutory law, supporting the legal aspects of contracts and prohibiting the unilateral modifications of said contracts by a single party to the agreement or a third party unaccountable in the transaction if challenged by either party, is involved.

STATEMENT OF THE CASE

I. BACKGROUND

As a matter of fact and court record, the prime petitioner, Betty J. Minder (now Mrs. Betty M. Allen), purchased Apartment No. 33 in the 1901 Wyoming Avenue Cooperative Association documented by Mutual Ownership Contract on the 15th day of April, 1964. (See Appendix.) At the time of signatory of both parties to the agreement, the prime petitioner received a copy of the Association's Bylaws and House Rules (See Appendix) wherein there was no mention of surcharge or penalty for subleasing, but the contract guaranteed perpetual use and right to sublease subject only to approval by the Association of the prospective tenant in terms of character, probity, etc.

In August, 1969, the prime petitioner was billed for a rental penalty by the fiscal agent of the Association at the rate of 75¢ per $1,000.00 capital value on Apartment No. 33. To avoid any appearance of delinquency and to preserve credit rating, the prime petitioner, by this time Mrs. Allen, continued to pay this penalty for one year, but upon reexamination of her Mutual Ownership Contract ceased to pay any further penalty for the exercise of her contract rights in equity.

II. LITIGATION

As of July 1, 1971, the petitioners were served with a summons to the Superior Court of the District of Columbia, filed on June 14, 1971, by the respondent's agent asking that the use of petitioners' apartment be terminated and for recovery of costs by the respondent and such further relief be granted by the Court as be just and proper.

This summons contained erroneous statements, maliciously designed to obfuscate the issues involved and prejudice the Court decision, to wit: the charge was made in the summons that the prime petitioner, Mrs. Allen, had rented her apartment for over three years and was therefore subject to a fifty percent surcharge on her monthly maintenance assessment; and further the false allegation was made that the apartment in question was now in a business operational category, whereas in fact the apartment in question had not then been rented for three years, nor was it used for business enterprise or any other purpose than a residence.

As of July 21, 1971, the petitioners, named as defendants in this action, responded in a legal brief prepared by Attorney John Matonis, denying the allegations of the respondents and entering a counterclaim. The counterclaim cited abuse of legal process by the respondents to gain unfair advantage of the defendant petitioners in this case. A fourth separate and distinct defense was entered against the malicious and incompetent attack by respondent agent against the Constitutional rights of petitioners (co-defendants) in the action cited, asking for compensatory damages to each of them in the amount of Ten Thousand Dollars ($10,000.00) and punitive damages in the amount of Five Thousand Dollars ($5,000.00). A second counterclaim was entered as and for a fifth separate and distinct defense against the incompetent and malicious attack by respondent agents directed to the nullification of petitioners' contractual rights in equity in the amount of Ten Thousand Dollars ($10,000.00) and punitive damages in the amount of Five Thousand Dollars ($5,000.00) for abuse of legal procedure, false and malicious statements made in the summons, legal harassment and intimidation resulting in substantial physical

injury, pain and suffering, mental and emotional distress, unnecessarily creating medical and legal expenses, court costs, loss of rental income, as well as embarrassment and opprobrium by the members of the Cooperative and the community of interest.

The case in Civil Action No. 5670-71 came before the Honorable W. Byron Sorrell in Superior Court of the District of Columbia on April 19, 1972, continuing for three days wherein the respondent's agents were allowed to testify interminably without interruption on irrelevant issues and opinions, but the petitioners were interrupted by the Court and testimony suppressed regarding the facts in the matter, overruling objections to this prejudicial procedure by petitioners' attorney, John Matonis.

The opinion filed by Judge Sorrell for the Superior Court of the District of Columbia at the conclusion of the initial proceedings brought before his Court by the respondents can be briefly summarized by quoting Item 6 under Conclusions, on page 6:

> "6. That the monthly rental surcharge is *reasonable* in view of the Association's consistent policy favoring owner-occupants." (emphasis added)

Upon this premise, Judge Sorrell found for the respondents and denied the petitioners' case.

III. APPEAL

On May 1, 1973, the petitioners filed an appeal from the decision of the Superior Court of the District of Columbia, Civil Division, CA 5670-71, represented by attorney John Matonis, before the District of Columbia Court of Appeals, Case No. 6816. The opinion of the Court of Appeals is summarized as follows:

> "On consideration hereby and after a review of the record and applicable law, the court is of the opinion that there exists no error of law which requires reversal, and that the factual rulings of the trial judge are fully supported by the record.

"Accordingly, this 2nd day of October, 1973, it is ordered and adjudged that the judgment of the Superior Court of D.C. in this case be and is hereby affirmed." (See Appendix)

IV. PETITION FOR REHEARING

On November 5, 1973, the petitioners filed a Petition for Rehearing before the D.C. Court of Appeals, citing the judicial errors committed in lower court opinions and decisions and providing guidance for a correct decision.

On November 7, 1973, an order was issued by the D.C. Court of Appeals denying the petition without *explanation* or *opinion* in support of the decision.

REASONS FOR GRANTING WRIT

I. INTRODUCTION

In view of the tremendous growth of housing cooperatives and condominiums throughout the country, both metropolitan and in the suburbs, some substantial control must be exercised by Government under law to regulate the transactions between owner-tenants and Cooperative Management, similar to landlord and tenant regulations. At present, there is no statutory law specifically governing these relationships and transactions, on a national level.

II. CONFLICTS IN LOWER COURT DECISIONS

In the case cited above in which the Association was upheld by Judge Sorrell, the same conflict of interest was simultaneously held in reverse decision by Judge Tim Murphy by decision rendered December 28, 1971, CA 5669-71, *1901 Wyoming Avenue Cooperative Association v. Margaret Lee*:

"Defendant had the right under the original ownership contract, paragraph 7, to 'sublease her dwelling' without the restriction of an increased operating charge which plaintiff (Respondent) now attempts to impose by a unilateral, yet indirect,

> modification of that contract via its subsequently enacted by-laws. The parole evidence rule requires the Court to enforce the presumption 'that a written contract is the final repository of the agreement of the parties.' *Luther Williams, Jr. Inc. v. Johnson*, 229 A.2d 163, 165 (D.C.App. 1967)."

On March 8, 1972, Judge Murphy ruled further on the same case, CA 5669-71, *supra*, to wit:

> "Furthermore, the Court is of the view that the terms of the original ownership contract cannot be drastically rewritten by merely a majority vote of the Cooperative Association. Although paragraph 13 of the contract requires the association members to 'abide by' the rules and regulations, such language cannot in any way be construed to permit a complete rewriting of a member's vital property rights, as in this case the right to sublease a dwelling without the restriction of an increased operation charge. The Association is free to pass revisions to its rules as long as the member's property rights under the original ownership contract are not affected thereby. Otherwise the Association must enter into meaningful negotiations with its members in order to change the terms of their contracts and obtain compliance with the new terms."

In his denial of the respondent's claims and efforts in litigation against Margaret Lee in an almost identical case to that presented for the petitioners against the same respondents, Judge Murphy ruled *against* the respondents, in contrast with Judge Sorrell who ruled *for* the respondents. This conflict of opinion at the Superior Court level of D.C. is one of the bases for appeal to the U.S. Supreme Court, demonstrating a need for final decision in this area of ambiguity not governed by statutory law and in conflict at inferior court.

In Civil Action CA 5915-72, the Honorable John R. Hess, of the Superior Court of D.C. again ruled in favor of Margaret D. Lee against the respondents in this case on an almost identical matter of litigation, to wit:

> "House Rules and Regulations, if reasonable, are binding upon all members who had contracted with the Association subsequent to their adoption. House Rules and Regulations, however, unilaterally adopted by the Association cannot modify existing property rights of a member under the original ownership contract *regardless of how reasonable they may be.* (From the Opinion and Order of Judge Murphy in *1901 Wyoming Avenue Cooperative Association v. Lee,* CA 5669-71) (Emphasis added)

III. CONSEQUENCES

As a result of this unrealistic but direct attack on her equity and property rights, Mrs. Allen had to undergo a series of clinical and psychiatric treatments at great personal expense.

Mr. Matonis, attorney for the petitioners, allowed the respondents to amend their previous legal position before Judge Sorrell in order to make their position more plausible but the damage to Mrs. Allen had already been done at great cost to her physical and mental health as well as monetary losses accrued, not only for medical and psychiatric expenses but also for loss of her tenants who were harassed by the respondents and ceased to rent Mrs. Allen's apartment. These facts were not recognized or acknowledged by the inferior court before Judge Sorrell.

CONCLUSIONS

For the foregoing reasons, this notice of appeal, Petition for Writ of Certiorari, request for review of lower court opinions and reversal of inferior court decisions should be granted on the basis of questions presented and the information provided herein or available on request from inferior court records.

Under the circumstances and conditions imposed, the petitioners are doing the best they can to preserve the integrity of our culture at great personal cost, without legal counsel in accordance with constitutional rights, pro se.

RELIEF REQUESTED

The U.S. Supreme Court is hereby respectfully requested to rule on the questions presented, resolve the existing conflicts at inferior court levels for the benefit of all concerned now and in the future regarding cooperative and condominium relationships between management and owner-tenants. But particularly in this case, the Court is requested to grant injunctive relief to the petitioners against any further coercive attempts by the respondents to extort money from or intimidate petitioners in their exercise of contractual rights guaranteed in their Mutual Ownership Contract as outlined above.

Respectfully submitted, pro se
Betty M. Allen and
Richard P. Allen, Petitioners
560 "N" Street, S.W. (N-109)
Washington, D.C. 20024

_____
Betty M. Allen

_____
Richard P. Allen

CERTIFICATE OF SERVICE

We hereby certify that copies of the foregoing were mailed to Respondent agent, Stuart H. Robeson, Esq., 1828 Jefferson Place, N. W., Washington, D. C. 10036, this 15th day of February, 1974.

Betty M. Allen

Richard P. Allen

INDEX OF APPENDICES

1. Application for perpetual ownership

2. Mutual Ownership Contract

3. ByLaws dated December 8, 1954

4. House Rules dated October 1, 1953

5. Summons to Superior Court of D. C., dated June 14, 1971

6. Complaint for Declaratory Relief by Respondents, dated June 14, 1971

7. Answer to Complaint and Summons with Counterclaim for Damages, dated July 21, 1971

8. Order of Superior Court of D. C., Judge Tim Murphy, CA56(CA5669-71, dated December 28, 1971

9. Order by Superior Court of D.C. Judge Tim Murphy, CA566[illegible] CA5669-71, dated March 8, 1972

10. Memorandum Opinion and Order by Superior Court Judge W. Byron Sorrell, CA5670-71, dated June 28, 1972

11. D. C. Court of Appeals Decision, 1901 Wyoming Avenue Cooperative Association v. Margaret Lee, No. 6732, dated February 27, 1973

12. D. C. Court of Appeals Decision, Betty M. Allen and Richard P. Allen v. 1901 Wyoming Avenue Co-operative Association, No. 6816 (CA5670-71),dated October 2, 1972

13. Petition for Rehearing before D. C. Court of Appeals No. 6816 (CA 5670–71) dated November 5, 1973

14. D. C. Court of Appeals Order, No. 6816, filed November 7, 1973

15. Memorandum Opinion by the Superior Court of D. C. of Judge John R. Hess, CA5915-72, dated January 16, 1974.

WASHINGTON, D.C.

Board of Directors
1901 Wyoming Avenue Cooperative Association

Date

Gentlemen:

Application is made for the transfer of right of occupancy and perpetual ownership of Apartment #_____.

NAME_____ Nationality_____

ADDRESS_____
Street City State

Do you own or rent at above address?_____ If renting, give name of

Landlord_____ Address_____

Phone number_____ How long have you lived at above address?

_____

POSITION OR TYPE OF WORK_____

Employer_____

Address_____ Phone Number_____

If employed in this position less than two years, give name of

Former Employer_____

Address_____ Phone Number_____

Name of banks with which you do business_____

Name of firm with which you have charge account_____

The occupants of this apartment will be: (if children, give ages)

_____ _____ _____
Name Relationship Age

_____ _____ _____
Name Relationship Age

_____ _____ _____
Name Relationship Age

REFERENCES:

_____ _____ _____
Name Address Position

_____ _____ _____
Name Address Position

_____ _____ _____
Name Address Position

It is understood and agreed that the applicant and all occupants of the apartment shall have read, shall conform to, and will abide by the by-laws and all published house rules in force during occupancy.

OWNER_____ APPLICANT_____

OWNER_____ APPLICANT_____

The applicant is hereby approved for membership in the Association by the Board of Directors of the 1901 Wyoming Ave. Cooperative Assoc.

_____ _____
President Secretary

1901 WYOMING AVENUE COOPERATIVE MUTUAL OWNERSHIP CONTRACT

This contract made in the City of Washington, District of Columbia, this 15thday of April ,19 6 by and between 1901 Wyoming Avenue Cooperative Association (hereinafter called the "Association") and Betty J. Andersen , a member of such Association (hereinafter called the "Member").

WITNESSETH that the Association and the Member do mutually agree as follows:

1. Membership Fee: The Association hereby acknowledges the payment by the Member of the sum of one hundred fifty dollars ($150.00) and in consideration thereof extends all rights and privileges of membership to the Member.

2. Sale and Purchase of Perpetual Use: Subject to all of the provisions in this Contract and for the Purchase Price hereinafter set forth, the Association hereby agrees to sell to the Member, and the Member hereby agrees to purchase from the Association, the right of perpetual use and enjoyment (hereinafter called the "Perpetual Use") of Apartment number 33 in 1901 Wyoming Avenue, N.W., Washington, D.C.

3. Delivery of Perpetual Use: The Association agrees to deliver such Perpetual Use to the member, pursuant to the provisions of a certain Purchase and Sales Contract whereunder it acquired legal title to the premises 1901 Wyoming Avenue, N.W. The Association also agrees to deliver the right to occupancy of said apartment number 33 subject however to whatever right any tenant of such apartment may have under the landlord and tenant law in the District of Columbia.

4. Purchase Price: The member agrees to pay as the Purchase Price for the Perpetual Use the sum of [illegible] hereinafter provided:

a. Down Payment: The member agrees to pay $ as a down payment on the purchase price.

b. Monthly Principal and Interest Payments, 1st Trust: The member agrees to pay his proportionate share of the 1st trust. The proportionate amount for apartment number is $. The monthly payments for apartment number are $,including interest and principal at the rate of per annum. Subsequent payments shall be made on or before the day of each and every month thereafter.

c. The balance of the deferred purchase money is secured by a collateral note on the Perpetual Use on Apartment number and is $,payable at $ per month which includes interest and principal at the rate of per annum until paid and payable to .

5. Operating payments: The Member agrees to make the operating payments as long as this Contract is in effect to cover his estimated pro rata cost of the Operating Services, Utilities and Reserves to be provided by the Association as described in paragraph 6 herein. From the date of the delivery of the Perpetual Use, the Member shall pay an operating payment on the 15th day of each and every month, so long as this contract is in effect. The member agrees that this is only an estimated figure and is subject to change, and can be increased or decreased by a majority of the Board of Directors or at an Annual Meeting or Special Meeting of the members, if necessary, to meet increased or decreased operating expenses. The estimated monthly operating expenses of apartment number 33 is $52.60 .

6. Application of Payments: The member agrees to make the payments required under paragraphs 4 and 5 herein at one time when due. Any balance of interest and operating payments remaining unpaid shall be added to and become part of the unpaid balance of the purchase price due to the Association and bear interest therewith.

7. Occupancy: The Member shall own and use the dwelling covered by this contract as a private dwelling and may enjoy the use, in common with all of the other members of the Association, of all community property and facilities of the Project, so long as he remains a Member of the Association, and abides by all of the terms of this contract. The member may sublease his dwelling, provided that his tenant be first approved by the directors of the Association.

8. Operating Services, Utilities and Reserves: The Association shall (a) provide necessary management and administration of the project (b) pay or provide for the payment of all taxes and assessments levied against the project, (c) procure and pay or provide for the payment for fire insurance on the project (including insurance on the Member's Dwelling but not on his personal property) (d) provide and pay for water,heat,refrigeration and electricity, in reasonable amounts, (e) set up reserves for contingencies, and (f) provide and pay for all necessary current repairs, maintenance and replacements of project property including the Member's dwelling, except that the Member shall be responsible for all interior repairs and all interior painting and decoration. If the Member does not make such interior repairs and provide such interior painting and decorating in a manner satisfactory to the Association, it may have any work performed which in its judgment is necessary and charge the cost to the Member. If such charge is not paid when it accrues, it shall be added to and become part of the unpaid balance of the Purchase Price due the Association and bear interest therewith.

9. Sale to Others: If the Member wishes to leave the Project, the Member may sell his Perpetual Use and assign this contract to any person accepted in writing by the Board of Directors of the Association. Such person shall thereafter enjoy the privileges of and be subject to all of the obligations of, the Member under this Contract.

10. Transfer by Gift or Inheritance:: The member may transfer his Perpetual Use or any interest under this Contract by Gift, bequest, assignment or otherwise to anyone, provided that if such Perpetual Use or interest is so transferred to a person other than a member of the member's family, such person shall not be permitted to occupy the premises without the approval of the Association.

11. Termination of Contract: In the event of default by the Member of any payments or charges required under this contract, or violation of any other provisions hereof, the Association may terminate this contract upon Ten (10) days written notice to the Member. The Association may terminate this Contract upon thirty (30) days written notices if its Board of Directors by a vote of four-fifths (4/5) of all the directors shall determine that the Member is for any reason undesirable as a resident in the project subject to the Member's rights in paragraphs 7,9, and 10.

12. The member agrees upon the termination of this contract to quit and surrender the dwelling occupied by him to the Association. The Member, for himself and any successor by operation of law or otherwise hereby waives any and all notice and demand for possession as provided by the laws of the District of Columbia.

13. Observance of Mutual Ownership Principles: The Member covenants that he shall preserve and promote the mutual ownership principles upon which the Association has been founded, abide by the Rules and Regulations of the Association, and by his active cooperation with its other members bring about for himself and his co-members a high standard in home and community conditions. Under the Articles of Association, the property rights of members are unequal and shall be determined by the initial valuation, which for Apt. 33 is $ 10,500.00.

14. Peaceable Possession: If the Member makes the payments herein required and performs all of the conditions and agreements of this contract the Association covenants that at all times while this contract remains in full force and effect, the Member may peaceably have and enjoy the sole use and benefit of the apartment herein above described, and may enjoy, in common with all other members of the Association, the use of all Community property and facilities of the Project, provided, however, that the Association shall have a right upon reasonable notice to the member to inspect the premises occupied by such member.

15. No representations other than those contained in this contract, the by-laws, and the charter shall be legal or binding on the Association.

IN WITNESS WHEREOF, The parties hereto have caused this Contract to be signed and sealed on the date and at the place first above mentioned.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Betty J. Mendes (SEAL)
Betty J. Mendes

_____ (SEAL)

By Joanne C. Neuland
(President) Joanne C. Neuland

SEAL
ATTEST:
BY Doris H. French
(Secretary)

BY-LAWS
OF
1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Article 1 - Name and Location

The name of this Association is 1901 Wyoming Avenue Cooperative Association. It is a non-profit Association without capital stock or shares, established pursuant to and under the District of Columbia Cooperative Association Act, Title 29 Chapter 8 of the Code of Laws of the District of Columbia.

Article 2 - Purpose

As set forth in its Articles of Association, this Association is not organized for pecuniary gain but for the following purposes:

a. The 1901 Wyoming Avenue Cooperative Association is formed to acquire, own, hold, build, manage, operate, sell, lease, pledge, mortgage, or otherwise dispose of housing of all kinds and appurtenant facilities for the mutual benefit of its members.

b. To provide on a non-profit basis, such community and other facilities, services or benefits as may be necessary or convenient for the welfare of its members and the usefulness of said Association.

c. In pursuance of said purposes the Association shall enter into an appropriate agreement for the acquisition of 1901 Wyoming Avenue, N.W., Washington, D.C. (hereinafter called the "project") as its initial acquisition.

Article 3 - Directors and Officers

Section 1. The affairs of the Association shall be managed by a Board of Directors composed of five persons. Except as to the first Board, whose members are designated in the Articles of Association or are elected by those so designated and who shall serve until the first annual meeting of the members or until their successors are elected and shall qualify, each director shall be elected by members at the regular annual meeting and hold office until his or her successor is elected and shall qualify, subject to the provisions of these By-Laws.

Section 2. At the first annual meeting of the members, all Directors shall be elected for a term of one year and each Director shall be a member of the Association. No compensation, remuneration, or any payment of any kind, or in any form, shall be paid to any Director for his services as such, unless compensation or remuneration be so voted to a Director or Directors at a special or annual meeting of the members.

Section 3. Any director or other officer of the Association may resign at any time. This resignation shall be made in writing, and shall take effect at the time specified therein or if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 4. The officers of the Association shall consist of a President, who shall serve as Chairman of the Board of Directors, a Vice President who shall serve in the absence of the President, both of whom shall be members of the Board of Directors, and a Secretary and a Treasurer. The Board of Directors shall elect the aforesaid officers after the meeting of the members, which should be held within five (5) days after each annual meeting of the members. Said officers shall hold office until the first meeting of the Board of Directors following the next succeeding annual meeting of the members of the Association or until their successors shall have been elected and shall qualify.

Section 5. When, for any reason, a vacancy on the Board of Directors occurs during the term of office of a director, the vacancy shall be filled by the remaining directors, not later than the next succeeding meeting of the Board, by electing a member of the Association who shall serve until the next annual meeting of the Association. When, for any cause, a vacancy occurs in the office of an officer of the Association before said officer's term has expired, the vacancy shall be filled by the Board of Directors, not later than the next succeeding meeting, by electing a person to serve for the remainder of the unexpired term or until his or her successor shall have been elected by the Board of Directors and shall have qualified.

Section 5a. Should one or more directors give notice of intended absence from any scheduled meeting or meetings of the Board of Directors, a quorum of

regular Board members may extend the voting privilege of the absent member or members to the Treasurer, the Secretary, or any qualified chairman of a committee who is a member of the Association, for the period of such absence.

Section 5b. The Board of Directors shall appoint such committees as it deems necessary to assist it in carrying on specific duties or to study and advise it on specific problems.

Section 6. A majority of the members of the Association present at any regular or special meeting duly called may remove any Director or officer for cause affecting the ability or fitness of the Director or officer to perform his duties upon specific written complaint previously filed with the Secretary of the Association, signed by the member or Director making the complaint, accompanied by a petition signed by at least five (5) members requesting the consideration of said complaint by the membership. Within five (5) days of receipt of said complaint and petition, the Secretary of the Association shall give ten (10) days' notice in writing of the time, place, and object of such meeting to the members and to the Director or officer against whom the complaint is made, said notice to be accompanied by a copy of the complaint. Such Director or officer shall be given an opportunity at said meeting to be heard in person or through counsel and to produce witnesses in regard to the complaint. If a Director be removed under the provisions of this section, the members shall at the same meeting or at an adjourned meeting elect person to fill the vacancy thus created for the remainder of the unexpired term. If an officer be removed under the provisions of this section, the Board of Directors shall appoint another to fill the vacancy thus created for the remainder of the unexpired term as provided in Section 5 of this Article.

Article 4 - Powers and Duties of the Board of Directors.

Section 1. The Board of Directors in its corporate capacity shall exercise all the powers of the Association and make necessary rules and regulations not inconsistent with the law, the Articles of Association, or these By-Laws; and no Director in his individual capacity shall attempt to deal with members of the Association, employees, or others in behalf of the Association unless authorized to do so by the Board of Directors.

Section 2. The Board of Directors may appoint, discharge, and fix the duties and salaries of the manager and of such employees, attorneys, and agents as it may deem necessary to carry on the business of the Association. Such appointees need not be members of the Association. Provided, however, the members at a special or annual meeting by a majority vote may discharge or set the salary of any agent or employee so employed by the Director.

Section 3. The Board of Directors shall meet at least monthly at a regular time as decided by the Board of Directors. Special meetings of the Board of Directors shall be held upon the call of the President or Vice President or upon the written request of the majority of the members of the Board of Directors to the President. Notice of regular or special meetings shall be in writing and be mailed or otherwise delivered to each Director by the Secretary at least three (3) days and not more than ten (10) days before the meeting. Notice of every special meeting shall state the object of such meeting, and no business other than that specified in such notice shall be transacted.

Section 4. The Board of Directors shall select one or more banks to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and disbursing the funds of the Association and the form of checks and the person or persons by whom the same shall be signed when not signed by the Treasurer, as provided herein. In every case the bank or banks selected shall be a member of the Federal Deposit Insurance Corporation or the successor thereof.

Section 5. The Board of Directors shall require the Treasurer, Manager, and every individual acting as officer or employee of the Association and handling Association funds and securities amounting to $1,000 or more, in any one year, to be covered by adequate bonds as determined by the Board, and said bonds to be furnished by responsible bonding companies as approved by the Board, at the expense of the Association. The Board may also require the bonding of other employees and officers.

Article 5 - Membership and Rights Thereunder

Section 1. Membership shall be open to all applicants approved by the Board of Directors, and the acceptance of any one for membership shall rest solely with the majority of the Board of Directors and there shall be no appeal from the Board's decision.

Section 2. The joint ownership of a membership interest by husband and wife or other adult members of a family with right to survivorship shall be

permissible, otherwise membership interest must be owned and controlled by an individual natural person. In joint ownership of a membership it will carry only one vote.

Section 3. The Board of Directors shall consider the moral character and the financial ability of all applicants for membership, and the Board of Directors solely shall approve or reject all such applicants and there is no appeal from their majority decision. The Board of Directors will extend membership to all applicants they approve.

Section 4. Each applicant for membership in this Association as a condition of membership shall: (1) supply for the information of the Board such data as it shall deem essential and (2) agree in writing to abide by the By-Laws and all rules and regulations of the Associations.

Section 5. The membership fee for new members shall be one hundred and fifty dollars ($150.00) for each dwelling unit. A dwelling unit is here defined as one of the original numbered units at the time the Association was organized. The certificate fee shall be one dollar ($1.00) and no certificate of membership shall be issued until such fees have been paid. However, transfer by inheritance or gift to a member of the immediate family shall be exempt from the membership and certificate fees. Each Certificate of Membership in the Association shall be numbered in order and shall be entered in the Membership Book of the Association as it is issued. Each Certificate of Membership shall exhibit the member's name, recite his membership in the Association, contain a statement of the requirements of Section 6, Article 8 hereof, have plainly printed on the face thereof the word "Non-Transferable," and be signed by the President of the Association and bear the seal of the Association attested by its Secretary.

Section 6. Certificates of Membership are not transferable. One who becomes eligible to membership by succeeding to the rights of a member of this Association and who becomes a member of the Association shall be issued a new Certificate of Membership, upon payment of the membership and certificate fees.

Section 7. Membership in the Association shall cease upon termination of the Mutual Ownership Contract.

Section 8. The Board of Directors may at any time make a demand [illegible] against an occupant member of the Association if the Board is of the opinion that such member has violated any of the provisions of these By-Laws, or that he has been guilty of conduct detrimental to the Association, or that he is for any reason undesirable as a resident. After service upon him of a copy of the complaint and a hearing given him by the Board upon his written request for such hearing filed with the Secretary of the Association, his membership, Mutual Ownership contract, and any other contract with the Association may be terminated by the affirmative vote of four of the members of the Board.

Section 9. The termination or forefeiture of membership hereunder shall automatically revoke the Certificate of Membership of the member affected thereby and such revocation shall be so recorded in the Membership Book of the Association. Upon termination or forfeiture of membership, the former member shall surrender his Certificate of Membership to the Association.

Article 6 - Duties of Officers

Section 1. The President shall:

(1) Act as presiding officer at all meetings of the Association and of the Board of Directors;

(2) Call special meetings of the Board of Directors, and of members of the Association;

(3) Sign, with the Treasurer, all checks, contracts, promissory notes, deeds, and other instruments on behalf of the Association, except those which the Board of Directors specifies may be signed by other persons.

(4) Perform all acts and duties usually required of an executive to insure that all orders and resolutions of the Board are carried into effect, and be shall be ex-officio a member of all standing committees.

Section 2. The Vice President shall:

(1) Act as presiding officer at all meetings of the Association and of the Board of Directors when the President is absent;

(2) In the absence of the President, perform all other acts or duties ordinarily required of the President;

(3) And such other duties as directed by the Board of Directors.

Section 3. Should the President and the Vice President be absent from any meeting, the Directors shall select from their number a person to act as Chairman of the meeting.

Section 4. The Secretary shall:

(1) Attend all (regular or special) meetings of the members of the Association and of the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done;

(2) Have the custody of the corporate seal which shall be affixed to such instruments as may require it and thereupon shall be attested by his signature or by the signature of the Treasurer;

(3) Attend to all correspondence on behalf of the Board, issue notice of meetings, and prepare the regular quarterly statements of the affairs of the Association;

(4) Keep the Membership book and receive all applications for admission to membership and present such applications to the Board at its next regular meeting;

(5) Pursue such other duties as the Board of Directors may determine and on all occasions, in the execution of his duties, act under the superintendence, control and direction of said Board;

(6) Have custody of the minute books of the meetings of Directors and members, which minute books shall at all times be available for the information of the Directors.

Section 5. The Treasurer shall:

(1) Attend all meetings of the Association and the Board of Directors;

(2) Receive such sums of money as may be paid into his hands for the account of the Association and disburse funds as may be ordered by the Board, taking proper vouchers for such disbursements, and be custodian of the corporate; contracts, leases and other important documents pertaining to the business of the Association which he shall keep.

(3) Supervise the keeping of accounts of all the financial transactions of the Association in books belonging to the Association and deliver such books to his successor. He shall prepare and distribute to all members of the Board at least ten days before each annual meeting of the members and whenever else required, a summary of the financial transactions and conditions of the Association for the preceding year. He shall make a full and accurate report of all matters and business pertaining to his office to the members at the annual meeting and make all reports required by law;

(4) Deposit all funds of the Association in the name and to the credit of the Association, in such depositories as shall be designated by the Board of Directors;

(5) Sign as Treasurer all checks, and, with the President, sign all contracts, promissory notes, deeds, and other instruments on behalf of the Association, except those which the Board of Directors specified may be signed by other persons;

(6) Furnish the Association with indemnity bond against loss for such amount as may be determined by the Board of Directors, at the expense of the Association;

(7) Perform such other duties as may be required of him by the Association or the Board of Directors.

Article 7 - Duties of Manager

Section 1. The duties of the Manager shall be:

(1) To manage and conduct the business of the Association in accordance with the general policies and authorization of the Board of Directors and/or the duly passed motions of the members at a special or annual meeting of the member ship after due notice has been given the manager.

(2) To engage and discharge the employees of the Association subordinate to him in accordance with authority given by the Board of Directors;

(3) To cause accurate books to be kept of the business of the Association and to submit the same, together with all files and records and inventories, and other information pertaining thereto, for inspection at any time by the Board of Directors or by auditor appointed by the Board, certified public accountants appointed by the Board or auditing committees of the Association.

Article 8 - Meetings of Members

Section 1. The regular annual meeting of the members shall be held on the last Wednesday in January at such time and place as designated by the Board of Directors, at which time, in addition to transacting the general business of the Association, Directors and members of standing and special committees shall be elected and reports given upon all matters affecting the Association. Nothing herein shall be construed to prevent the election by the members of other committees at other regular or special meetings of the members.

Section 2. Special meetings of the members shall be called by the President whenever he shall deem it necessary or as directed by Resolution of the Board of Directors or within five (5) days of receipt by him of a petition signed by at least seven members addressed to the President and mailed or otherwise delivered to him.

Section 3. Notice of regular and special meetings shall be in writing and be mailed or otherwise caused to be delivered by the Secretary at least three (3) days and not more than ten (10) days before the meeting. Notice of every special meeting shall state the object of such meeting, and no business other than that specified in said notice shall be transacted thereat. Whenever any notice is required by these By-Laws to be given, personal notice is not meant unless otherwise so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in a Post Office box addressed to the person entitled thereto at his last known Post Office address, and such notice shall be deemed to have been given on the day of such mailing.

Section 4. The presence of at least fifteen of the members shall constitute a quorum for the transaction of business at any meeting of the Association. If less than a quorum shall be in attendance at any time for which a meeting shall have been called, such meeting may, [illegible] adjourned from time to time by a majority of members present. If notice of such adjourned meeting is sent to the members, such notice containing a statement of the purpose of the meeting and also that the previous meeting failed for lack of a quorum,and that it is proposed to hold the adjourned meeting with a quorum of those present, then any number of members shall constitute a quorum at such meeting.

Section 5. The order of business at all meetings of the members and of the Board of Directors shall be as follows:

(1) Roll call
(2) Proof of Due Notice of Meeting
(3) Reading of the Minutes of the previous Meeting and Action Thereon
(4) Reports of Officers and Directors
(5) Report of Committees
(6) Unfinished Business
(7) New Business
(8) Adjournment

The parliamentary procedure for conduct of all meetings shall be governed by Robert's Rules of Order (Revised).

Section 6. Each member of the Association is entitled to one (1) vote only upon all questions coming before any and all meetings of the Association, except that in joint ownership only one of the joint owners may cast a vote. Each vote must be cast in person, and there shall be no voting by proxy or by mail. Provided, however, if a member is absent from the housing project or is ill and is therefore unable to cast his vote in person, his or her spouse shall be entitled to cast the vote of the absent member, upon presentation of evidence of said absence or illness which is satisfactory to the presiding officer.

Section 7. Voting shall be viva voce (by the voice) or by show of hands, unless the Chairman calls for a rising vote, a roll call vote, or a secret ballot. However, in the election of Directors, any member may require a secret ballot.

Article 9 - Non-Profit Requirements

Section 1. Dwelling units and other services and necessities shall be made available to the members of the Association at no profit to the Association. The charges therefore as determined by the Board of Directors or by a majority vote of the members at a special or annual meeting of the members shall be only

sufficient to enable the Association to meet its property-purchase amortization payments, pay fixed and operating expenses and build up a general reserve for contingencies and special reserves to take care of maintenance and repair, vacancies, and the repurchase of equities from withdrawing members. In the event there shall be received in any one year funds in excess of the above listed expenses, such savings shall be returned to the members by a reduction in operating assessment for the ensuing year.

Section 2. Upon a member's withdrawing from membership in the Association and leaving the community for employment elsewhere or for other valid reasons or causes, said member may sell and transfer his or her net equity, if any, and occupancy rights to the Association or to another under the terms of his Mutual Ownership contract with the Association, subject to the limitations that a purchaser and transferee other than the Association shall first be approved by the Association to take said member's place in the dwelling unit vacated.

Section 3. Approval of the Board is required for the use of a dwelling unit as a regular place of business. Any member who shall contemplate using his apartment as a place of business shall first secure the approval of the Board, and such members may be subject to additional maintenance charge to be determined by the Board, but not more than one-half the normal maintenance charge.

Article 10 - Auditing

Section 1. A committee of three (3) persons shall be chosen from among the members of the Association by the Board of Directors to serve as an auditing committee until the first annual meeting of the members of the Association. Thereafter said committee shall be elected by the members of the Association at their regular annual meeting. Vacancies in said Committee shall be filled from among the members who are not Directors of the Association by the members at the next regular meeting of members following the occurrence of the vacancy, or at a prior special meeting called for that purpose. It shall be the duty of the auditing committee to make an audit of the books of the Association annually, giving a written report thereof to the members.

Article 11 - Fiscal Year

The fiscal year of this Association shall be January 1 to December 31.

Article 12 - Seal

The Association seal shall be circular and shall have inscribed concentrically thereon the name of the Association. Said seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced, or otherwise.

Article 13 - Lost Certificate of Membership

The Board of Directors may direct a new Certificate of Membership to be issued for the same cost as the original in place of any certificate theretofore issued by the Association alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost and the performance of such further acts and production of such further evidence as the Board may require. The new certificate shall be plainly marked "Duplicate".

Article 15 - Amendments

These By-Laws may be amended by a two-thirds vote of the members present and voting (there being a quorum present at the time the vote is taken) at any regular or special meeting subject to the same limitations and prohibitions as to subject matter as those set forth in the provisions of the Certificate of Association with reference to amending the Certificate of Association. Amendments may be proposed by the Board of Directors or by petition signed by at least ten members containing the exact text of the proposed amendment or amendments, filed with the Secretary of the Association, who shall mail or otherwise deliver notice thereof to all members not less than three (3) days before amendments shall be voted upon.

As Amended, December 8, 1954.
By Order.
Board of Directors.

THE 1901 WYOMING AVENUE COOPERATIVE ASSOCIATION
HOUSE RULES AND REGULATIONS

The following House Rules and Regulations are put forward by the Board of Directors of the 1401 Wyoming Avenue Cooperative Association for the mutual benefit of all who live in the building. It is our hope that all residents will cooperate in these matters in order that the building may be a pleasant, attractive and safe place for all of us to live. Anyone having any further suggestions or comments is invited to submit the same in writing to the Board of Directors.

I Management

1. The Board of Directors wishes to call attention of Association members to the following resolution which was approved by a majority vote of members at a meeting held on Dec. 14, 1949.

"Any member 2 days late (excepting Saturdays, Sundays, and holidays) in making his monthly payments shall be assessed a fine of $1.00. For each 30 days in arrears a $5.00 penalty shall be imposed."

2. Residents must contact the Manager for any and all services required of employees of the Association In general, employees will not be available to do more than make simple adjustments to equipment. If materials are required, they must be supplied by residents. Repairs are the responsibility of residents and employees should not be called on for such work as this would interfere with their regular duties.

3. Residents should notify the Manager when any repairs or alterations are made which require shutting off the electricity or water.

4. Residents having outside contractors do work in their apartments must have said contractors clean up and haul away all trash and rubbish incident to the work. Otherwise the Association will have to bill the residents for any additional charges made by the regular trash collector.

5. Residents must consult the Board of Directors prior to installing any radio or TV antenae on roof or elsewhere.

6. The services of an exterminator have been engaged by the Association and are available to residents at no extra cost. Residents should notify the Manager when such services are needed.

7. Residents must not attempt to operate house engineering equipment such as Elevators, ventilator fans, main switches, or the heating plant. Tampering with thermostats, meters or safety devices will subject offenders to the rigors of the law and the liability for any damage resulting from same.

8. The house telephone in the Manager's office is for the transaction of Association business. Personal incoming calls will be received and messages taken which must be called for or will be delivered with the next mail. Tenants will not be called to the telephone to take incoming personal calls.

9. Loud or unnecessary noises, such as those occurring from parties, radios, television, pianos or other musical instruments, and hard shoes on bare floors must be curtailed between the hours of 11:00 p.m. and 6:30 a.m.

10. Because of numerous complaints, the Board of Directors finds it necessary to rule that no new dogs shall be housed in the apartment; present dogs are permitted but shall not be replaced upon their demise or disposal.

11. The following forms of insurance are carried by the Association but do not cover contents of an individual member's apartment:

a. Owners, Landlords, and Tenants (public liability)
b. Fire and storm coverage (on building)
c. Workmen's compensation
d. Boiler insurance

Members are advised to carry fire and extended insurance on their furniture and household goods. It is recommended that members also carry liability insurance, since they are liable for any damage done to a neighbor's apartment because of faulty plumbing and acts of carelessness. The Association,however, is responsible for any damage to apartments caused by faulty plumbing, wiring, etc., not accessible from the interior of any apartment.

HOUSE RULES AND REGULATIONS

II HOUSEKEEPING

12. Garbage and refuse are collected each morning except Sunday beginning at 6:00 a.m. It will also be collected Saturday evening beginning at 7:00 p.m. The following rules apply to garbage and refuse:

a. Do not leave in hall over night
b. Do not place in hall closets or other concealed portions of the building.
c. Place wet garbage in water-tight containers
d. Garbage and trash must be kept separate
e. Broken glass must be wrapped separately and be clearly marked so the janitor will take care not to cut himself.
f. Only garbage, not papers, etc., shall be put in the garbage can outdoors near the loading platform

13. Residents are requested to help keep halls, lobby, and driveway free from matches, cigarett stubs, and other debris. Send ash trays are located near the elevator and are to be used for that purpose only.

14. Residents are required by city ordinance to refrain from throwing anything out of windows, this includes shaking of rugs or mops.

15. Debris must not be left on or thrown off the roof garden or any other part of the roof.

a. Bottles, cans, or other debris should be removed by individuals taking them to the roof
b. Cigarettes must be properly extinguished before leaving the roof and dead stubbs placed in recepticles put on roof for this purpose.

16. It is requested that in rearranging or moving the furniture on the roof that you do not drag it across the roof but pick it up, this is in consideration of those living on the floor immediately below.

17. Potted plants and flowers are not to be placed on outside window ledges

18. Laundry should not be hung in windows to dry.

III Utilities (Water, lights, and heat)

19. In order to keep operating expenses down, everyone is requested not to waste water or electricity. Leaking faucets should be repaired promptly. The Manager will recommend a qualified plumber or you may call one of your own choice.

20. Fuse boxes should be supplied with the 15 ampere size of fuses or fusetrons. If fuses blow frequently, residents should advise the Manager so that proper inspection can be made to locate the source of the trouble.

21. The heating plant is a low-pressure, one-line steam-vapor system and requires that:

a. Radiators be turned completely on or off to avoid water binding and water leaks at the radiators
b. Air relief valves release trapped air freely, but no water
c. Shut-off valve end of the radiators should be 1/16 -inch lower than the air relief valve end

The most common troubles are:

a. Formation of rust or sediment in shut-off valves making it difficult to shut radiator off completely which leads to leakage
b. Clogging of air relief valves leaving entrapped air which makes it difficult for the radiator to heat properly

The management can have cold radiators examined for simple adjustments and can recommend a qualified plumber if repairs are needed

22. Residents are warned to be on the lookout in their apartments for steam or water leaks which might cause damage to neighboring apartments and for which they can be held liable.

HOUSE RULES AND REGULATIONS

23. Residents are requested upon leaving their apartments to make certain that all faucets are shut off, that lights and other electrical devices are turned off, and that their front doors are locked.

24. Residents when using the laundering equipment are requested to follow carefully the instructions posted on the wall above the machines.

25. All persons using the laundering equipment are requested to remove their laundry from the washers or dryer immediately upon completion of the washing or drying cycles, thereby precluding the necessity of others removing their belongings in order to use the equipment.

26. Residents who use the dryer are asked to make sure that the lint box covering the air outlet at the upper right of the door is clean. The box can be cleaned by unhooking and shaking out the lint.

27. Persons using the washing machines are requested to see that these machines are clean on exterior before leaving.

IV. Fire Hazards

28. Inflammable cleaning fluids must not be stored in locked closets or storage bins. They should be inspected often for leaks, should be kept tightly stoppered, and should be kept away from heat.

29. Cigaretts should be properly extinguished AT ALL TIMES. Do not place any burning cigarett butts in garbage cans.

30. Fire doors leading to elevators and stair wells must be kept closed AT ALL TIMES to conform to District Fire Regulations. Violation might endanger both lives and property. A reported infraction will result in higher insurance rate of both the building and individual possessions.

31. Fire extinguishers are for emergency use only and are not to be removed from their racks except in the event of fire or for proper inspection and recharging.

32. Residents are warned not to use larger sized fuses than are required in III-20 and not to use any substitutes, such as a penny.

V. Parking

33. There is an area marked off for parking of authorized owner residents who pay for this privilege. Assignment of specific space is made twice yearly following drawings by lot. The loading platform zone is reserved for loading and unloading only. Violation of parking regulations is subject to police action.

Revised October 1, 1953 by:

THE BOARD OF DIRECTORS

Superior Court of the District of Columbia

613 G Street, Northwest — 4th Floor

Telephone: 629-4292

1901 Wyoming Ave. Resp Apts
1901 Wyoming Ave. N.W.
Wash D.C.

Plaintiff

vs.

Betty P Allen a/k/a Betty J Mander
Richard P Allen
560 N. St. S.W.
Wash D.C.

Defendant

N109

RECEIVED UNITED STATES ATTORNEY'S OFFICE JAN 14 10 15 AM '71 WASHINGTON, D.C.

Rec'd Jan 14, 1971

CA 5670-71

Civil Action File No.

SUMMONS

To the above named Defendant:

You are hereby summoned and required to file an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service.

The Answer must be filed in Room 401, 613 G Street, N. W., between 9:00 a.m. and 4:30 p.m. Mondays through Fridays or between 9:00 a.m. and 12:00 Noon on Saturdays, but not on Sundays or holidays. On or before the day you file your Answer, a copy of it must be mailed to the attorney for the party plaintiff who is suing you. The Attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, *DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.*

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (NA 8-1161) or the Neighborhood Legal Services (629-9161) for help or come to Room 402, 613 G Street, N. W. for more information concerning places where you may ask for such help.

JOSEPH M. BURTON
Clerk of the Court

By _____
Deputy Clerk

Attorney for Plaintiff

187 E Jefferson St. NW
Wash D.C.

Address

Telephone 659-2720

Date: JAN 14 1971

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

613 G Street, N. W., 4th Floor

Washington, D. C.

1901 Wyoming Avenue Cooperative Association, a corporation 1901 Wyoming Avenue, N. W. Washington, D. C. Plaintiff vs. Betty M. Allen a/k/a Betty J. Mander 560 N Street, S. W. Washington, D. C. and Richard P. Allen 560 N Street, S. W. Washington, D. C. Defendants	Civil Action No._____

COMPLAINT FOR DECLARATORY RELIEF

1. Jurisdiction is based on this Court's general jurisdiction by Public Law 91-358 Section 11-921 approved July 29, 1970, and Title 28:2201 of U.S. Code Annotated.

2. That on or about April 15, 1964, the plaintiff issued the defendant a Mutual Ownership Contract for the perpetual use of Apartment 33 at 1901 Wyoming Avenue Cooperative Association , a corporation.

3. That the defendants agreed when they became members of this cooperative association that they would "abide by the By-laws and all rules and regulations of this Association" (Article 5, Section 4). The defendants also agreed to preserve and promote the mutual ownership principles upon which the Association was founded, and to bring about a high standard in home and community conditions. That the defendants agreed not to use their apartment as a "place of business" (Article 9, Section 3). That the Board of Directors on June 9, 1965, pursuant to Article 9, Section 3 of the By-laws defined that any apartment rented for three years or more will not

be considered a residence but will become an income-producing investment property and that an additional operating charge of 50% per month will be charged.

4. That the defendants have rented their apartment for more than three years.

5. That the defendants have refused or neglected to pay this additional operating charge.

6. The controversy is whether the plaintiff through its agent, servants or employees has the right to terminate the perpetual use of this apartment since the defendants are not complying with the By-laws and all rules and regulations of this Association?

WHEREFORE, the plaintiff prays that the Court adjudge:

1. That the defendants are not complying with the By-laws and all rules and regulations of this Association.

2. That since the defendants are not complying with its By-laws and rules and regulations that their perpetual use of this apartment be terminated.

3. That the plaintiff recover its costs.

4. And for such other and further relief as may be just and proper.

Stuart H. Robeson
Attorney for plaintiff
1828 Jefferson Place, N. W.
Washington, D. C. 20036
659 2720

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

613 "G" Street, Northwest, Fourth Floor

Washington, D.C.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION, a corporation 1901 Wyoming Avenue, N.W. Washington, D.C., Plaintiff,	:	
-v.-	:	Civil Action File No. CA5570-71
BETTY M. ALLEN a/k/a Betty J. Mender 560 "N" Street, S.W. Washington, D.C.	:	
and	:	
RICHARD P. ALLEN 560 "N" Street, S.W. Washington, D.C., Defendants.	:	
	:	ANSWER

COMES NOW, the Defendants, BETTY M. ALLEN and RICHARD P. ALLEN, through their attorney, to answer the Complaint in this action, and respectfully allege:

AS AND FOR A FIRST
SEPARATE AND DISTINCT DEFENSE

1. This Court does not have jurisdiction in this case.

AS AND FOR A SECOND
SEPARATE AND DISTINCT DEFENSE

2. Plaintiff has not stated a cause of action or claim upon which relief can be granted.

AS AND FOR A THIRD
SEPARATE AND DISTINCT DEFENSE

3. Defendants, and each of them, deny the allegations in paragraph "2" of the Complaint, but admit that Defendant, BETTY M. ALLEN, before she married Defendant, RICHARD P. ALLEN, and while she was known by and used the name, Betty J. Mender, did enter into a Mutual Ownership Contract with the Plaintiff for the use of Apartment No. 33, at No. 1901 Wyoming Avenue, N.W.

4. Defendants, and each of them, deny the allegation

in paragraph "2," but admit that Defendant, BETTY M. ALLEN, when she became a member of the cooperative, agreed to abide by the Bylaws and all rules of regulation of the association, to preserve and promote the mutual ownership principles upon which the association was founded and to bring a high standard in home and community conditions and not to use her apartment as a place of business. Defendants, and each of them, deny that pursuant to Article 9, Section 3 of the Bylaws, the Board of Directors, on June 9, 1965, defined that any apartment rented for three years or more will not be considered a residence but will become an income-producing investment property and that an additional operating charge of 50% per month will be charged.

5. Defendants, and each of them, never agreed to any characterization as "income-producing investment property" any apartment rented for three (3) years or more.

6. Defendants, and each of them, deny paragraph "4" but admit renting Apartment No. 33 on a one (1) year lease, with an option to buy, to Paul and Florence Martin, who now live at Apartment No. 33 on a month-to-month lease.

7. Defendants, and each of them, deny the allegations in paragraph "5" but admit that they, and each of them, have not paid the alleged "additional operating charge" since on or about August, 1970.

8. The alleged "additional operating charge" is a penalty which was never agreed upon by either of the Defendants and is not justified.

9. Defendants, and each of them, deny paragraph "6."

10. Plaintiff has been and is unfairly and unconstitutionally discriminating against the Defendants, and each of them, in the formation of and implementation of policies and regulations of the association.

11. Paragraph "5" is a conclusion of law.

AS AND FOR A
FIRST COUNTERCLAIM
AND AS AND FOR A FOURTH
SEPARATE AND DISTINCT DEFENSE

12. Paragraphs "3" through "10" are repeated and realleged as if fully set forth herein.

13. Plaintiff, who is the Defendant in counterclaim, abused legal process to gain an unfair advantage over the Defendants, and each of them, who are Plaintiffs in counterclaim, to wit, Plaintiff caused this suit to be instituted as a means of obtaining control and possession of Apartment No. 33 and decreasing the value of the equitable and legal rights of the Defendants, and each of them, in Apartment No. 33. Plaintiff has so acted wilfully and with malice.

14. As a result of the foregoing actions, Defendants, and each of them, suffered substential physical injury, pain and suffering, mental and emotional distress, loss of income and were subjected to embarrassment and opprobrium by the members of the cooperative and the community.

15. Defendants, and each of them, are entitled to compensatory damages in the amount of Ten Thousand Dollars ($10,000.00) and punitive damages in the amount of Five Thousand Dollars ($5,000.00).

AS AND FOR A
SECOND COUNTERCLAIM
AND AS AND FOR A FIFTH
SEPARATE AND DISTINCT DEFENSE

16. Paragraphs "3" through "10" are repeated and realleged as if fully set forth herein.

17. Plaintiff, Defendant in counterclaim, has and is interfering with and in the personal and financial relationship between Defendants, and each of them, Plaintiffs in counterclaim, and Paul and Florence Martin, their tenants now living in Apartment No. 33. Plaintiff has so acted wilfully and with malice.

18. As a result of the foregoing actions, Defendants, and each of them, suffered substantial physical injury, pain and suffering, mental and emotional dirtress, loss of income and were subjected to embarrassment and opprobrium by the members of the cooperative and the community.

19. Defendants, and each of them, are entitled to compensatory damages in the amount of Ten Thousand Dollars ($10,000.00) and punitive damages in the amount of Five Thousand Dollars ($5,000.00).

WHEREFORE, Defendants pray that this Honorable Court:

1. Dismiss Plaintiff's Complaint; and

2. Enjoin Plaintiff from abusing legal process; and

3. Enjoin Plaintiff from interfering with and in the personal and financial relationship with Paul and Florence Martin; and

4. Award money damages in the amount of Ten Thousand Dollars ($10,000.00) compensatory damages and Five Thousand Dollars ($5,000.00) punitive damages, on the First Counterclaim; and

5. Award money damages in the amount of Ten Thousand Dollars ($10,000.00) compensatory damages and Five Thousand Dollars ($5,000.00) punitive damages, on the Second Counterclaim; and

6. Award Court costs to the Defendants; and

7. Award to Defendants all costs of litigation, including attorneys' fees; and

8. Grant any relief this Court may deem meet, just and proper.

Dated: July 21, 1971
Washington, D.C.

Respectfully submitted,

MATONIS AND KUBINSKI

By _____
John Joseph Matonis, Jr.
2020 [illegible]
Washington, D.C. 20007
Phone: Federal 8-2334

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

1931 WYOMING AVENUE COOPERATIVE ASSOCIATION

v. Civil Action No. 5669-71

MARGARET D. LEE

ORDER

This matter came before the Court, sitting in Civil Calendar Control, on defendant's motion for summary judgment. Having heard the arguments of counsel for both sides, the Court took the matter under advisement on December 3, 1971. Now, having more fully considered the record herein and the memoranda of points and authorities submitted by both sides, the Court is of the view that defendant's motion for summary judgment should be granted. Defendant had a right under the original ownership contract, paragraph 7, to "sublease her dwelling" without the restriction of an increased operating charge which plaintiff now attempts to impose by a unilateral, yet indirect, modification of that contract via its subsequently enacted bylaws. The parole evidence rule requires the Court to enforce the presumption "that a written contract is the final repository of the agreement of the parties." Luther Williams, Jr., Inc. v. Johnson, 229 A.2d 163, 165 (D.C. App. 1967).

Finally, in granting defendant's motion for summary judgment, the Court does not reach the issue of whether the fifty percent (50%) rental surcharge is arbitrary and unenforceable.

SO ORDERED.

/s/

Tim Murphy, Judge

December 28, 1971

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

1901 KYTE NE WILSON COOPERATIVE ASSOCIATION

v. Civil Action No. 5669-71

MARGARET D. LEE

ORDER

This matter came before the Court on plaintiff's motion for reconsideration of the Court's Order dated December 28, 1971, which granted defendant's motion for summary judgment. Now, after careful re-examination of the entire record herein, the Court is of the view that plaintiff's motion for reconsideration must be denied.

Having reaffirmed the order granting defendant's motion for summary judgment and dismissing the complaint herein, the Court notes that the parties here dispute only the result of that previous order and not the facts in the record. It appears that a trial would not produce any further facts. Therefore, the matter is in a proper posture for a definitive ruling on the motion for summary judgment.

Furthermore, the Court is of the view that the terms of the original ownership contract cannot be drastically rewritten by merely a majority vote of the cooperative association. Although paragraph 13 of the contract requires the association's members to "abide by" its rules and regulations, such language cannot in any way be construed to permit a complete rewriting of a member's vital property rights, as in this case the right to sublease a dwelling without the restriction of

an increased operation charge. The Association is free to pass revisions to its rules as long as the members' property rights under the original ownership contract are not affected thereby. Otherwise, the Association must enter into meaningful negotiations with its members in order to change the terms of their contracts and obtain compliance with the new terms.

For the reasons stated above, plaintiff's motion to reconsider the order of December 28, 1971, must be denied. Therefore defendant's motion for summary judgment remains as granted on that date and the complaint must be dismissed.

SO ORDERED.

Tim Murphy, Judge

MAR 8 1972
Date

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were mailed to Stuart E. Robeson, Esq., 1828 Jefferson Place, N.W., Washington, D. C. 20036; and Martin Shulman, Esq., Landis, Cohen, Singman and Rauh, 1910 Sunderland Place, N.W., Washington, D. C. 20036; this 8th day of March, 1972.

Tim Murphy, Judge

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION, A Corporation,	:	
Plaintiff	:	
v.	:	CA No. 5670-71
BETTY M. ALLEN, aka Betty L. Mender and RICHARD P. ALLEN,	:	
Defendants	:	

MEMORANDUM OPINION AND ORDER

INTRODUCTION

Plaintiff, a Cooperative Association, in an amended complaint[1/] for declaratory relief, asks this Court to determine whether it has the power according to the rules and regulations of the Association to exact a monthly rental surcharge and, upon failure to pay, to terminate the perpetual use of the apartment of the defendants, Richard and Betty Allen. Defendants do not deny the amount of the unpaid surcharge ($133.96) nor the existence of the rules and regulations which provide for the surcharge, but deny their liability to pay it under the terms of their Mutual Ownership Contract. In addition, each defendant has counterclaimed for $20,000.00 compensatory damages and $10,000.00 punitive damages for physical injury, pain and suffering, mental and emotional distress, loss of income, and embarrassment suffered as a result of plaintiff's alleged malicious institution of suit to obtain control of the apartment and alleged interference with the personal and financial relationship of defendants with their subtenants.

1/ Plaintiff filed its amended complaint on May 6, 1972, and withdrew its suit for an additional operating charge of 50% per month of the rental surcharge on defendant's apartment.

THE ISSUE

Paragraph 13 of the Mutual Ownership Contract states in pertinent part:

> The Member covenants that he shall preserve and promote the mutual ownership principles upon which the Association has been formed, abide by the Rules & Regulations of the Association . . .

The sole issue presented to this Court is whether the plaintiff has the right to enforce the bylaws, rules and regulations of the Association regarding the monthly rental surcharge[2/] upon the defendants under the terms of their Mutual Ownership Contract.

FINDINGS OF FACT

Plaintiff, 1901 Wyoming Avenue Cooperative Association, is a District of Columbia Corporation and owns the apartment building located at the same address. There are fifty-seven "cooperative apartments" in the building. Purchase of an apartment is made through a Mutual Ownership Contract[3/] which is supplemented by the Rules & Regulations of the Association.

On April 30, 1959, the Association adopted a regulation at a special meeting of the membership whereby any member who rented his apartment would have to pay a monthly rental surcharge of 75 cents per thousand dollars of original valuation.

On April 15, 1964, the defendant, Miss Betty Mender signed a Mutual Ownership Contract by which she purchased the perpetual use of apartment No. 33 in the Cooperative Association. The original valuation of this apartment was estimated at $10,500.00. Miss Mender lived in her apartment for some time, then married Richard Allen who moved therewith her. From July 15, 1969,

---

2/ 75 cents per thousand dollars of original valuation for any member who rents his apartment.

3/ A copy of the Mutual Ownership contract is added at the end of this Opinion.

to December 15, 1971, Mr. and Mrs. Allen, rented their apartment to Mr. and Mrs. Paul Martin. The surcharge, which computes to $7.83 a month was paid by defendants until July 15, 1970; for the remaining 17 months that the Martins occupied their apartment, defendants refused to pay the surcharge which amounts to $133.96.

PLAINTIFF'S CONTENTIONS

1. The contractual right of subleasing is not abrogated by the charging of a modest rental surcharge.

2. The defendants are not complying with that regulation of the Association which charges an appropriate rental surcharge.

3. The defendants waived any objection to the regulation in question by making payments pursuant thereto.

4. The defendants are in default in the amount of $133.96.

5. If defendants fail to satisfy this obligation, their right of perpetual use and enjoyment of apartment No. 33 may be terminated by the Cooperative Association.

DEFENDANTS' CONTENTIONS

1. Defendants' interest, as owners of cooperative unit No. 33, is a real property interest, or in the alternative, a special hybrid proprietary interest combining the interest of an owner of real property, a corporate shareholder and an owner of a leasehold interest.

2. The Mutual Ownership Contract executed by the defendant, Betty Mender, on April 15, 1964, is the sole repository of the rights and obligations of the parties.

3. The defendants had no notice of the 1959 House Rule which recites a monthly surcharge of 75 cents per $1,000.00 original valuation for members who rent their units.

4. The specific provisions of the Mutual Ownership Contract granting to the defendants the ownership of apartment No. 33 in perpetuity in paragraphs 2, 3 and 7 of the Mutual Ownership

Contract and the right to sublease in paragraph 7 governs over any general provision obligating the defendants to abide by rules and regulations not a part of their corporate charter or bylaws in paragraph 13. Restatement of Contracts, Section 236, Comment C.[4/]

5. The monthly surcharge, therefore, is a penalty levied upon the defendants for the exercise of their contractual right to sublet and is illegal and unenforceable.

6. The monthly surcharge is irrational and arbitrary.

7. Defendants counterclaim for compensatory and punitive damages on the basis of plaintiff's malicious breach of contract, abuse of legal process and interferance with financial relations.

OPINION OF THE COURT

It is not apparent to this Court whether the Cooperative Association located at 1901 Wyoming Avenue should be termed a condominium or a cooperative apartment, since it possesses characteristics of both. A condominium is defined as:

(1) individual ownership of a unit or apartment;

(2) an individual interest in certain designated common elements which serve all the units in the condominium, and

(3) an agreement among the unit owners regulating the administration and maintenance of the property.

The general characteristics of a cooperative apartment is a multiunit dwelling in which each resident has:

(1) an interest in the entity owning the building, and

4/ Section 236, Secondary Rules Aiding Application of Interpretation. . . . (c) Where there is an inconsistency between general provisions and specific provisions, the specific provisions ordinarily qualify the meaning of the general provisions.

(2) a lease entitling him to occupy a particular apartment within the building. A cooperative apartment has been called by one court "a partnership for the mutual benefit of co-operative owners expressed in corporate terms." 5/

What is apparent to this Court is that under either definition, the mutuality or partnership of ownership in the administration and control of the property predominates. Section 13 of plaintiff's Mutual Ownership Contract specifically binds the member to the rules and regulations of the Association. As this is a case of first impression in this jurisdiction, the Court follows the test set out in Recent Statute: The Balance To Be Struck Between The Independence Of Each Unit Owner & The Necessity For Certain Controls Over The Use Of The Units & The Common Areas Presents Another Difficulty, 77 Harvard Law Review 779, 1964:

> Statutes uniformly give the condominium organization power to adopt bylaws governing the conduct of the unit owners, but there remain questions as to the permissible scope of prohibition and the sanctions to be invoked in case of noncompliance.

It is clear that the Mutual Ownership Contract, here in issue, grants defendants the perpetual use of apartment No. 33 subject to the rules and regulations of the Association. Whether those rules are rational is subject to further scrutiny. This Court deems the assessment of a 75 cent surcharge per $1,000.00 of the original valuation reasonable in light of the weight of the evidence which supports plaintiff's position. In keeping with the Cooperative's original and consistent policy which was formulated to provide owner-occupied dwelling places and to promote the greatest benefit for owner-members, plaintiff levied a modest monthly rental surcharge on subletting to encourage the owner to occupy rather than rent for profit.

The regulation also does not attempt to regulate the mode of living of the occupants of the building. See Justice Court

5/ Tompkins v. Hale, 172 Misc. 1071, 15 NYS 2d 854, affd. 259 App. Div. 860, 20 NYS 2d 398, affd. 284, NY 675, 30 NE 2d 721.

Cooperative v. Sundow, 270 NYS 2d 929.

The Court, therefore, concludes that:

1. Defendants bound themselves to abide by the rules and regulations of the 1901 Wyoming Avenue Cooperative Association when Mrs. Allen signed the contract in 1964;

2. The bylaws, rules and regulations of the Association are relevant and material as to the Mutual Ownership Contract and the function of the Association;

3. The monthly rental surcharge of 75 cents per $1,000.00 original valuation was validly adopted by the members of the Association on April 30, 1959, for unit owners who sublease their premises. Defendants' failure to read or plaintiff's failure to provide the rules for inspection does not relieve defendants of the burden of abiding by them;

4. That when defendants rented their apartment they knew of the regulation and paid accordingly for twelve months;

5. That for seventeen months, defendants have failed to pay the assessment, which at the time of trial amounted to $133.96;

6. That the monthly rental surcharge is reasonable in view of the Association's consistent policy favoring owner-occupants.

The Court distinguishes 1901 Wyoming Avenue Cooperative Association v. Margaret D. Lee, Opinion per Murphy, J., decided December 28, 1971, motion for reconsideration denied, Mar. 8, 1972, [Civil Action No. 5669-71] and the case at bar. In the Lee case, the Cooperative Association attempted to modify the Mutual Ownership Contract by a subsequently enacted bylaw of the majority of the members. The new bylaw imposed a 50% rental surcharge per month, in addition to the basic rental surcharge, on members who rented for more than three years. Judge Murphy held that:

> . . . the terms of the original ownership contract cannot be drastically rewritten by merely a majority vote of the cooperative association. . . . such language cannot in any way be construed to permit a complete rewriting of a member's vital property rights. . . .

In the case at hand, however, plaintiff has withdrawn its complaint for declaratory relief as to the 50% additional operating charge of the monthly rental surcharge. The modest basic rental surcharge (75 cents per $1,000.00 of original valuation per month) was in force when defendant signed her contract, and was consistent with the Association's policy of favoring owner-occupants.

DAMAGES

The Court, in concluding that plaintiff has not breached its contract with defendants, orders that no damages can be awarded defendants for compensatory or punitive damages. The Court additionally notes that even if plaintiff had maliciously breached the contract, defendants would not be entitled to punitive damages, McIntosh v. Aetna Life Ins. Co., 268 A2d 518 (1970). Punitive damages are not assessable in a breach of contract action, except when the conduct assumes the character of a tort, and defendants have also failed to prove that plaintiff's conduct assumed that nature, Den v. Den, 222 A2d 647 (1966).

In closing, with regard to defendant's counterclaim for malicious prosecution, the Court does not consider plaintiff's suit, filed after seventeen months of non-payment and with evidence of many fruitless efforts at settlement, an abuse of legal process.

It is, therefore, this 20th day of June, 1972,

ADJUDGED and ORDERED that plaintiffs be and they are hereby granted judgment against defendants in the amount of $133.96 and costs, and execution thereon be and it is hereby suspended

until the 14th day of July, 1972; and it is further

ADJUDGED and ORDERED that defendants' counterclaim be and they are hereby dismissed.

The Court declines to rule without prejudice to either parties rights, on plaintiff's complaint for declaratory relief as to termination of the Mutual Ownership Contract upon defendants' failure to pay the $133.96. Plaintiff has presented no evidence that the Association has proceeded according to Paragraph 13 of the Mutual Ownership Contract regarding termination of defendant's perpetual use of apartment No. 33. Any opinion by this Court would be premature at this time. See Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 88 L.Ed. 967, 64 S.Ct. 724.

By the Court,

W. BYRON SORRELL
Judge

Copies to:

Stuart H. Robeson, Esq.
Attorney for Plaintiff
1828 Jefferson Place, N. W.
Washington, D. C. 20036

John Joseph Matonis, Esq.
Attorney for Defendants
2603 "P" Street, N. W.
Washington, D. C. 20009

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 6732

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION, a corporation, APPELLANT,

v.

MARGARET D. LEE A/K/A MARGARET D. NAPPER, APPELLEE.

Appeal from the Superior Court of the District of Columbia

(Argued December 14, 1972 Decided February 27, 1973)

Stuart H. Robeson for appellant.

B. Michael Rauh participated at oral argument for appellee.

Before Pair, Yeagley and Harris, Associate Judges.

PER CURIAM: Appellant brought an action seeking an order that appellee's "perpetual use" of the apartment she had purchased in appellant's cooperative "be terminated". Appellee filed an answer pro se and later her attorney filed a motion for summary judgment[1] which was granted on December 28, 1971. In response to appellant's timely motion to reconsider the order of December 28, 1971, the court on March 8, 1972, denied the motion,

[1] Super. Ct. Civ. R. 56(b) which is identical to FED. R. CIV. P. 56(b).

reaffirmed its granting of summary judgment for appellee and dismissed the complaint.

The judgment entered on the latter motion was not appealed and is not in issue here. The only issue raised is the propriety of the trial court's denial on July 10, 1972, of appellant's motion to reconsider its order of June 23, 1972, denying appellant's motion to amend the complaint. The latter motion was not filed until May 22, 1972, thirty-five days after the last entry on the docket which was a court order clarifying the aforementioned orders of December 28, 1971, and March 8, 1972. We affirm.

Superior Court Civil Rule 15(a) provides in pertinent part: "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . ." We note that appellee had mailed to the clerk of the trial court on June 30, 1971, her pro se answer to the complaint. That answer was marked "filed" on July 2, 1971. Although the record does not reflect that a copy of the answer was served on appellant, a copy was admittedly received by appellant through the mails bearing the date of June 30, 1971. Further, the existence of the answer was referred to in a motion for a continuance filed by appellee's attorney when he was first retained. Even though appellee's answer was not in customary legal form, having no caption, all of the essentials of a caption were contained in the first sentence of the answer.[2] Its thrust was clear and served to inform appellant of appellee's defense. Further, at no time prior to the filing of appellee's motion for summary judgment, which was not until December 3, 1971, did appellant contend that appellee was in default for failure to plead.

[2] *See* 5 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1321, at 461.

We agree with the court's finding in the order of March 8, 1972, "that a trial would not produce any further facts." Consequently, the judgment entered was a resolution of the merits.[3] The time for taking an appeal from that order lapsed and no effort was made to reopen or set aside the judgment under Superior Court Civil Rule 60(b).

We know of no law or rule permitting a party at such a late date to circumvent the finality of a judgment by seeking to amend his complaint.[4] Not finding error on the part of the trial court in refusing to reconsider the denial of the motion to amend the complaint, the order is

Affirmed.

[3] Martucci v. Mayer, 210 F.2d 259 (3d Cir. 1954); 6 J. MOORE, FEDERAL PRACTICE ¶ 56.03, at 2051 (2d ed. 1948).

[4] *See* Cassell v. Michaux, 99 U.S.App.D.C. 375, 240 F.2d 406 (1956); Safeway Stores v. Coe, 78 U.S.App.D.C. 19, 136 F.2d 771 (1943); 6 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1489, at 445.

District of Columbia
Court of Appeals

No. 6816 January Term, 1973

BETTY N. ALLEN,
a/k/a BETTY J. MENDER
and
RICHARD P. ALLEN, Appellants,

v. CA 5670-71

1901 WYOMING AVENUE
COOPERATIVE ASSOCIATION,
a corporation, Appellee.

Appeal from the Superior Court of the
District of Columbia, Civil Division.

BEFORE: Fickling and Nebeker, Associate Judges, and Quinn, Associate Judge, Retired.

J U D G M E N T

This case came on to be heard on the record from the Civil Division of the Superior Court of the District of Columbia and was briefed and argued by counsel.

On consideration whereof, and after a review of the record and applicable law, the court is of the opinion that there exists no error of law which requires reversal and that the factual rulings of the trial judge are fully supported by the record.

Accordingly, it is this 2nd day of October 1973,

ORDERED AND ADJUDGED that the judgment of the Superior Court of the District of Columbia in this cause be, and it hereby is, affirmed.

Per Curiam.
For the Court:

Alexander L. Stevas,
Clerk.

Copies to:

Honorable W. Byron Sorrell
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

John Joseph Matonis, Esq., 2603 P Street, N. W. (20007)
Attorney for Appellants.

Stuart H. Robeson, Esq., 1828 Jefferson Place, N.W. (20036)
Attorney for Appellee.

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 6816	)	
	)	
Betty M. Allen	)	
and	)	
Richard P. Allen	)	
Plaintiffs	)	
	)	
v.	)	CA 5670 - 71
	)	
1901 Wyoming Avenue Cooperative Assn.	)	
Defendant	)	

PETITION FOR REHEARING

The Plaintiffs respectfully request a rehearing and reconsideration of previous decision, citing the following reasons:

1. That the previous opinion and judgment entered by Judge Sorrell was biased by his own participation in a cooperative such as the one operated by the Defendant, allowing interminal testimony by the Defendants on matters of impression, opinion and speculation while cutting short testimony of fact by Plaintiffs. For example, many useless hours were spent on testimony (objected to by Plaintiff's counsel as immaterial and irrelevant) surrounding proposed rules and regulations prepared by a committee but rejected without consideration by the cooperative. Ironically, the proposed rules and regulations received more attention in the court than by the cooperative.

2. That Judge Sorrell failed to recognize the following facts which are pertinent, relevant and material in this case, to wit:

a. That Mrs. Allen was not given any notice of penalty associated with renting her apartment at the time of signing the Mutual Ownership Contract. As a matter of fact the sublease penalty rule was contained only in the Board minutes, and was not published or available to prospective members until after the onset of this litigation.

b. That the contract takes precedence over house rules or by-laws in conflict.

c. That a house rule in conflict with the contract is in error and null and void before law.

d. That attempts to abrogate or nullify the letter, spirit or intent of the contract by the whimsical intervention of a third party, i.e., the Board of Directors, represents a conflict of interest and an illegal encroachment on rights in equity guaranteed by contract to the owner under law.

e. That such encroachments, if not challenged, can at any time modify the contract unilaterally without the consent of the owner, thereby nullifying the mutual aspect and obligations inherent in the original contract.

f. That one compromise of principle after another leads inevitably to an intolerable, perhaps overwhelming, concentration of power in terms of authority by the Board of Directors and the reduction of the cooperative member to the status of tenant rather than owner.

g. That the precedent set by his opinion could influence future decisions, adversely affecting the rights of all other citizens electing to assume the responsibilities of cooperative ownership but denied their rights under law.

h. That the Defendants had the opportunity to request a revision to all contracts at the time of passing the house rule levying the penalty for renting, but failed to do so and also failed to mention the penalty to the Plaintiff at the time of contract signing, and this rule was not included in the "published" rules and regulations as part of the contract by reference at the time of signing the said contract.

i. That the house rules are for social conduct and cooperation, not to be used for amending contracts.

j. That the house rules are written by a five-man Board of Directors of limited term of office and not even coordinated with the cooperative membership for review and approval.

3. That Judge Sorrell allowed the Defendant to amend its original position asking for cancellation of Plaintiff's contract and demand for 50% penalty for renting, ignoring the traumatic effect on the Plaintiff of this outrageous attack unsupported by the facts in the matter. As a matter of fact, contrary to the allegations in the original Summons to court initiated by the Defendants in this appeal action, the Plaintiffs had not leased their apartment for the three-year period alleged by the Defendants and the Summons also included other false and erroneous statements, but demanded grievous penalty for alleged transgressions. This abuse of legal procedure led directly to the traumatic injury of the major Plaintiff (Mrs. Allen) in this case and the present action for redress in this Court of Appeals.

4. Judge Sorrell held in his opinion that the sole issue in the case was whether the Defendant had the right to enforce the by-laws, rules and regulations of the Association regarding the monthly rental surcharge upon the Plaintiffs under terms of their Mutual Ownership Contract, when in fact the real issue was whether the contract would hold over whimsical changes in the house rules after the fact of contract signatory.

5. At the top of page 7 of Judge Sorrell's Opinion, quoting Judge Murphy's Opinion of March 8, 1972, in a similar case, he omitted the most significant elements under consideration:

QUOTED: .... the terms of the original ownership contract cannot be drastically rewritten by merely a majority vote of the cooperative association. ... such language cannot in any way be construed to permit a complete rewriting of a member's vital property rights .....

OMITTED: ..... as in this case the right to sublease a dwelling without restriction of an increased operating charge. The Association is free to pass revisions to its rules as long as the members' property rights under the original ownership contract are not affected thereby. Otherwise, the Association must enter into meaningful negotiations with its members in order to change the terms of their contracts and obtain compliance with the new terms.

6. On page 8 of his Opinion, Judge Sorrell quotes from the 77 Harvard Law Review 779, 1964:

> Statutes uniformly give the condominium organization power to adopt bylaws governing the conduct of the unit owners, but there remain questions as to the permissible scope of prohibition and the sanctions to be invoked in case of noncompliance.

He then admitted that the ownership contract here in issue grants Defendants (Allens, in the lower court) the perpetual use of Apartment #33 subject to the rules and regulations of the Association, and that whether the rules are rational is subject to further scrutiny, but deemed the surcharge to be "reasonable," and later referred to it as a "modest" surcharge. The latter conclusion of reasonableness, while admitting the rationality needed further scrutiny, is in conflict with logic and certainly has no relevance to the cited Harvard Law Review item which addresses "conduct" of cooperative members and does not speak to the point of monthly surcharge or rental penalty. The conclusion drawn is therefore non sequitur on the one hand and begging the question on the other, wherein both premise and conclusion are equally subject to proof.

7. In Judge Sorrell's last statement on page 5 of his Opinion, he says that the regulation also does not attempt to regulate the mode of living of the occupants of the building, when in fact, the house rules do address the mode of living and conduct of cooperative members. This statement by Judge Sorrell in context of his Opinion is in a separate paragraph all by itself and does not clearly specify what particular regulation he had in mind, since he uses the indefinite article and no modifier on the term "regulation." It therefor raises more questions than it answers and confuses the issue. But while erecting the straw man "mode of living" Judge Sorrell admitted in the previous statement that the ownership contract is herein an issue, which is contradictory of his previous statement made on page 2 that the sole issue was whether the Plaintiff (Cooperative in the lower court) has the right to enforce the by-laws, etc.

8. On page 6 of his Opinion, Judge Sorrell drew a number of conclusions which actually are a mixture of facts and assumptions. For example, the conclusion that the rental surcharge is reasonable was really a premise used for argument earlier in his Opinion. This is an example of circumlocution, a fallacy in argument. The facts presented in his conclusions should have been presented under FINDINGS OF FACT, not under CONCLUSIONS. The conclusions drawn therefore, are specious, and do not logically support the decision rendered.

9. As held in ordinary landlord and tenant law which is applicable to the relationship between a cooperative association and an apartment owner, Hicks v Digelow, N.Y.S. 55 A.2d 924, 926 (1947)

> No charges shall be imposed upon a tenant in addition to those specified in the lease.
>
> ***
>
> ... no additional liability will be imposed upon a tenant unless it is clearly within the provisions of the instrument under which it is claimed. If the instrument contains any ambiguity it must be resolved against the landlord and in favor of the tenant.

Black v. General Miner Supply Co., 305 N.Y. 385, 113 N.E. 2d 528 at 530.

10. Courts agree, as in Vernon Manor Cooperative Arts. v Salatino, 170 N.Y.S. 2d 895, at 900-902 (1950), that it makes no difference whether a cooperative association has reserved a right to change the by-laws or house rules, so far as contractual rights are concerned. In point of fact, courts have recognized that the power to gerrymander the by-laws can be a source of oppression in a cooperative,

and such changes should be carefully scrutinized for inequity. As the court stated in Mutual Redevelopment Houses Inc. v. Panft, 249 N.Y.S. 2d 988,991 (1964):

> The provisions of Article Fourth, paragraph 15, concerning compliance with all now existing or hereafter enacted rules and that violation of a substantial obligation of occupancy, are too broad and undefined in scope. They leave untrammeled power in the landlord's directors and would compel tenants to an absolute pledge of compliance without the slightest knowledge of the rule. Such autocracy should not be encouraged.

11. Contractual rights supersede and take precedence over rules and regulations passed after the fact of signatory. As in Tompkins v Hale, 15 N.Y.S. 2d 854 (1939) aff'd. 20 N.Y.S. 2d 398, aff'd. 284 N.Y.S. 675, 30 N.E. 2d 721, the Association's Board of Directors is powerless to "legislate" contractual rights out of existence. If this not be true than one abridgement after another can take place against equity rights of member tenants to the point where ownership is a mockery and responsibility becomes a liability. This rule of law has been followed in subsequent cases. As in Vernon Manor Co-operative v Salatino, supra, the court stated:

> A by-law which disturbs a vested right is ipso facto not reasonable even though the power to change the by-laws has been reserved.
>
> ***
>
> ... a vested right is a property interest so substantial in character that its destruction or deprivation cannot be justified by the objectives in view.
>
> ***
>
> In no case was the vested right constituted of less than a substantial property right based on a contract. 1/
> (Emphasis added)

12. The rental penalty levied on the Plaintiffs by the Defendants is discriminatory and over the years would accumulate to thousands of dollars, thereby depreciating the Plaintiff's apartment value compared with other apartments in the cooperative. The Defendants made no claim relating the rental penalty to increased costs resulting from subleasing. Such penalty by cooperative associations have not been favored heretofore by the courts. Vernon Manor, supra.

1/ Vernon Manor, supra, involved a court's approval of a $2.00 monthly addition to a cooperative's maintenance charge to cover the extra cost of water, electricity and repairs, occasioned through installation of washing machines by the owners, even though there was no express restriction on the right to install such appliances in the owners' proprietary leases. It is clear, however, from that court's discussion of vested property rights that any violation of a right based on a written contract, such as here involved, would have been invalidated by the court.

13. The justification offered by the Defendants for the rental penalty that the Association needs protection from "absentee ownership" is without basis in fact, untenable by reason, logic or the facts in the matter. The Association has the uncontested reservation to itself all the protection which it requires on this point which is the right to pass approval on any prospective sublessee, satisfying itself fully regarding the probity, financial soundness and stability of a prospective tenant. Having received such proofs of character it should be immaterial to the Association whether the occupant is a renter or owner, nor should it be a matter of concern to the Defendants whether there is loss or gain to the Plaintiffs in such transaction within the right of perpetual use certified by the ownership contract. Furthermore, the pretense by Defendant that absentee owners deprive the Association of cooperative support in management areas is invalidated by the fact that such support is arbitrarily denied and refused in actual practice even though offered by absentee owners. The fallacy of Defendant's position on this point is further revealed in the light of transfer of management responsibility to a fiscal agent and previous experience wherein owner-tenants refused generally to participate in management or serve in official capacity. The alleged surcharge on leasing is therefore a blatant penalty on the exercise of contractual right and an abridgement of rights in equity and belies its avowed purpose. The Defendant's argument on this point is therefore merely a sham to cover or hide its real intention to enlarge its authority and increase its income at the owner's expense.

14. In the order of precedence of statutory law, D.C. Government Regulations, Articles of Incorporation for Cooperative Association, Mutual Ownership Contract, Cooperative By-laws and House Rules, there should be, therefore, no by-law passed by the cooperative in conflict with the ownership contract or any higher rule, regulation or law. By the same token, no house rule should conflict with any by-law or [illegible] any right set forth in the ownership contract. The real issue in this case is whether a house rule in conflict with the ownership contract and higher laws of jurisdiction can be upheld when contested in court. The Plaintiffs are alleged to have compromised

their rights under contract by paying the rental penalty when in fact they considered it illegal from the beginning, and complied only long enough to reveal its substantial inequity and obvious intrusion and abridgement of contractual rights on the basis of legal counsel provided.

In the sale of any cooperative apartment, a bona fide contract is recognized in law, but a house rule appearing only in Board minutes unknown to the prospective purchaser cannot be held to be part of the contract, and should be considered illegal if it abridges, nullifies or negates the contract in any respect.

In view of these previously demonstrated inequities and errors in judgment by lower court jurisdiction, the Plaintiffs request reconsideration and redress of wrongs suffered at the hands of Defendants who struck without warning or use of the standard procedure in resolving cooperative problems, and abused legal process to cause us grievous mental, physical and economic suffering.

Wherefore, Plaintiffs request that this case be reconsidered in the light of the facts specified herein and supported by the record but not heretofore given the weight or priority deserved in judicial decision for the best interests of all concerned.

Respectfully submitted,

Betty M. Allen
Betty M. Allen, pro se

Richard F. Allen
Richard F. Allen, pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Rehearing was mailed, postage prepaid, this 5th day of November, 1973, to Stuart Robeson, Esq., 1028 Jefferson Place, N.W. Washington, D.C. 20036, attorney for Defendant.

Betty M. Allen
Betty M. Allen

District of Columbia
Court of Appeals

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED NOV 7 1973

No. 6816

OCTOBER TERM, 19 73
Alexander L. Stevas
Clerk

BETTY M. ALLEN
a/k/a BETTY J. MENDER
and
RICHARD P. ALLEN,

Appellants,

v. CA 5670-71

1901 WYOMING AVENUE COOPERATIVE
ASSOCIATION, a corporation,

Appellee.

BEFORE: Fickling, Nebeker, Associate Judges, and Quinn, Associate Judge, Retired.

O R D E R

On consideration of appellants' petition for rehearing, it is

ORDERED that appellants' petition is denied.

PER CURIAM

Copies to:

Honorable W. Byron Sorrell
Judge, Superior Court of the District of Columbia

Clerk, Superior Court of the District of Columbia

John J. Matonis
2603 P Street, N.W.(7)

Betty M. Allen
Richard P. Allen
560 N Street, S.W. (24)

Stuart H. Robeson, Esquire
1828 Jefferson Place, N.W. (36)

mdd

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

MARGARET D. LEE

v. Civil Action No. 5915-72

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

MEMORANDUM OPINION

This matter came on for hearing before the Court on plaintiff's motion for partial summary judgment as to liability and defendant's motion for summary judgment. Although defendant's motion had been previously granted by another judge of this Court and the order was later vacated by a different judge, the plaintiff agrees that the Court is not now precluded from acting on the motion. The reason the Court is not so precluded is that the setting aside of the order granting summary judgment was not prompted by any consideration of the motion's merits. The order granting defendant summary judgment was vacated because it had been entered without the knowledge or consent of the plaintiff. See Fraser v. Doing, 76 U.S. App. D.C. 111, 130 F.2d 617 (1942).

The dispute between the parties arose out of a contract entered into in 1954 whereby plaintiff, Margaret D. Lee, purchased from the defendant, 1901 Wyoming Avenue Cooperative Association, the right of perpetual use and enjoyment of apartment number 25 in premises 1901 Wyoming Avenue, N.W. Under the terms of Section 8 of the agreement, the Association was to

> "***provide and pay for water, heat, refrigeration and electricity in reasonable amounts, [and] ***provide and pay for all necessary current repairs, maintenance and replacements of project property including the Member's dwelling, except that the Member shall be responsible for all interior repairs and all interior painting and decorating.***"

The gravamen of plaintiff's complaint is that she is not being supplied an adequate amount of hot water as required by the above agreement. The parties agree, at least for purposes of these motions, that the Association is supplying an adequate amount of hot water through the main riser, but that the feeder pipe from the main riser to the fixtures is in such a clogged and deteriorated condition that only a small amount of the hot water is reaching the fixtures in plaintiff's apartment. The question then is whether the maintenance of the feeder pipe is the responsibility of the plaintiff or of the Association.

The main riser runs through the walls from the basement of the building to the top floor. A "T" fitting within the wall connects the main riser to the feeder pipe. The feeder pipe runs under the floor within the apartment and emerges at the point where it is attached to the fixture. A plumbing and heating contractor has reported that

> "To correct this problem (of an adequate supply of hot water) we will have to cut up tile floor and replace the existing galvanized hot water line with new 1/2" copper tubing from riser to fixture and replace floor and wall tile."
>
> "This can be done for the sum of $296.00 plus tax." (Exhibit I to Answer to Interrogatories)

The Association, in support of its contention that its obligation is fulfilled once it supplies hot water "to" as distinguished from "in" the apartment, points to the House Rules and Regulations adopted by its Board of Directors. The pertinent rule in existence at the time the parties entered into their contract provided that

> "11. The following forms of insurance are carried by the Association but do not cover contents of an individual member's apartment***. Members are advised to carry fire and extended insurance on their furniture and household goods. It is recommended that members also carry liability insurance, since they are liable for any damage done to a neighbor's apartment because of faulty plumbing and acts of carelessness. The Association, however, is responsible for any damage to apartments caused by faulty plumbing, wiring, etc., not accessible from the surface in any apartment." (1953 House Rules and Regulations)

The Rule was amended in 1965 to provide as follows:

> "a. Owners are responsible for loss of property from fire or other damage within their apartments. The Association does not carry insurance on contents of individual apartments."
>
> "b. Owners are responsible for damage caused to other apartments in the building from faulty plumbing, bad wiring, or acts of carelessness within the responsibility of the owner."
>
> "c. Owners are responsible for repairs accessible from the "surface" in any apartment, as defined by legal precedent. Except for damages caused by faulty plumbing in the main risers, which belong to the Association, damage is the responsibility of each owner."

The Rule was amended again in 1972, just prior to the institution of this lawsuit, and provides that

> "Owners are responsible for the loss of property from fire or other calamities within their apartments. Although the Association insures the entire building according to principles of sound management, the contents of individual apartments are not covered. An owner is liable for damage caused to other apartments by his plumbing, wiring, other personal property, or from actions within the responsibility of the owner. The owner is solely responsible for and must maintain the plumbing, wiring, etc., that serves specifically his apartment, as defined by legal precedent. For example, the Association maintains and is responsible for damages from leaks from risers, but an individual owner must maintain and is responsible for damages from leaks from the feeder pipes to his apartment." (Subsection J of Section 2, original underlining omitted.)

The House Rules and Regulations, if reasonable, are binding upon all the members who had contracted with the Association subsequent to their adoption. (Opinion and order of Judge Sorrell in Allen v. 1901 Wyoming Avenue Cooperative Association, Civil Action No. 5670-71, affirmed without opinion in D.C. App. No. 6816). House Rules and Regulations, however, unilaterally adopted by the Association, cannot modify existing property rights of a member under the original ownership contract regardless of how reasonable they may be. (Opinion and order of Judge Murphy in 1901 Wyoming Avenue Cooperative Association v. Lee, Civil Action No. 5569-71.)

The Association agrees, as it must, that the 1965 and 1972 versions of its House Rule cannot modify any right which the plaintiff obtained in 1954 when her contract was executed. Its argument is that the 1965 and 1972 versions of the pertinent House Rule are "merely designed to clarify the contractual relationship between plaintiff and the Association as to responsibility for utility repairs."[1] (Paragraph 3 of defendant's objection to motion for partial summary judgment). A contract, however, can hardly be clarified by such a unilaterally adopted and self-serving rule or regulation.

The extent of the Association's obligation to the plaintiff respecting the furnishing of hot water can only be determined from an examination of the contract itself, together with any assistance that may be provided by the House Rule in existence at the time of the execution of the contract. The Association contracted to "provide" hot water and to pay for all necessary repairs and replacements of project property including the member's dwelling. The only exception to this commitment is that the member is to be responsible for all "interior" repairs and all interior painting and decorating.

Nowhere in the contract is "interior" defined. If, as the Association contends, "interior" includes everything from "one concrete slab below to the concrete slab above" and the area "just behind the plastered surface of the walls"[2] the Association, by agreeing in section 8 of the contract to "pay for all necessary current repairs, maintenance and replacements of project property including the member's dwelling," obligated itself to do absolutely nothing inside its members' apartments in the way of repairs or maintenance.

1/ Perhaps this argument could be construed as a tacit admission that the contract, drafted by the Association, is ambiguous.

2/ Paragraph 1 of defendant's additional points and authorities in support of summary judgment.

House Rule 11, which was in existence at the time the parties contracted, purports to define the respective obligations of the Association and its members by placing the responsibility upon the Association for "any damage to apartments caused by faulty plumbing, wiring, etc., not accessible from the surface in any apartment." Although the Association has said little about this Rule, presumably its position would be that the pipes and wires are accessible from the surface by merely tearing up the floor and removing the plaster from the walls. If, this be so, then again it has obligated itself to do nothing inside its members' apartments.

The Association argues that from the inception of the cooperative each member has been regarded as responsible for taking care of repairs in his own living unit and that the Association has taken care of the main risers and cables which distribute water and electricity from the basement throughout the building. They liken this to single-family home ownership where it is customarily the responsibility of the home owner to maintain the utility lines from the edge of the private property to the fixture or receptacle inside the house. It says further that this arrangement generally coincides with that prevailing in other cooperative dwelling associations in this city and elsewhere. The question, of course, is what the members were obligated to do and not what they may have done, voluntarily or involuntarily. Furthermore, if the Association is stating that the prevailing practice is to place the responsibility upon the members for repairs of this nature, it sets forth no supporting authority. The text material which the Court has examined is to the contrary. For example, in the publication by the Institute of Real Estate Management, Cooperative Apartments Their Organization and Profitable Operation, Lease For A Co-op, (W. Watkins) (1956), it is stated that

> "The regular maintenance charge will cover all expenses normally covered by rent in a typical rental building, except items of the type where replacements are frequently made because of changes in fashion and taste. Thus each tenant-owner pays for his own decorating, and maintenance and replacement of stoves, refrigerators, kitchen linoleum and window shades."***

"It is customary for the cooperative corporation to repair all other equipment and parts of the structure and replace them when worn out: light switches, outlets, faucets, weatherstripping, radiator valves.**** (Page 9.)

"***Within each individual apartment, the lessee must pay for repairs, decorating and replacement of equipment unless the equipment needing repair is concealed in a wall. If a pipe leaks in a wall of an apartment, the building will open up the wall as necessary to locate and repair the leak and afterwards will repair any structural damage such as plaster and trim. Redecorating is, as always, at the lessee's expense." (Page 69.)

See also Vol. 2, Rohan and Reskin, Real Estate Transactions, Cooperative Housing Law and Practice, §9.05[2] (1973),

"The corporation's obligations with respect to maintenance of a cooperative corporation's premises are generally spelled out in summary fashion to include the duty to maintain the premises in A-number-one condition, including the duty to make all repairs and replacements except those specifically made the obligation of the lessees in the occupancy agreement, and those made necessary by act, neglect or carelessness of the lessees or any member of a lessee's family or their guests, employees or agents. Since the lessee's obligations in this connection are generally limited to redecoration of his own apartment and routine maintenance and replacement of the equipment within his apartment (such as stove and refrigerator), all other maintenance responsibility is that of the lessor-corporation."

The Court concludes that the construction which the Association places upon "interior" is erroneous, and one which was not within the contemplation of the parties at the time the contract was executed. Cf. Susskind v. 1136 Tenants Corporation, 251 N.Y.S. 3d 321 (1964). Certainly when one living in a multiple story building is told by the owner that the apartment will be supplied with water, it is reasonable to assume that the water will be supplied to a fixture within the apartment as opposed to a "T" connection inside the wall. Also, the adoption of the Associations interpretation of section 8 would render other portions of the contract meaningless, which would be violative of the "cardinal rule of interpretation that all portions of a document are to be considered together and each is to be given effect if this process yields a reasonable whole." Huber v. Mullan 246 F. Supp. 8, (D.C. Md. 1964). Furthermore, if, as the Association's argument seems to suggest, 3/

3/ See footnote 1.

there are any ambiguities in the contract, such ambiguities must be resolved against the Association, the drafter of the contract. Cowal v. Hopkins, 229 A.2d 452, 454 (D.C. App. 1967).

Finally, at oral argument on the motions the Association raised, for the first time, the defense of laches. The defense is not only untimely, but is without merit. The parties have been corresponding with each other rather continuously from 1966 through 1973 in an effort to solve this dispute. (Exhibits D and I to Answer to Interrogatories).

An order will be entered granting summary judgment for plaintiff on the issue of liability. Because of the age of this case, the Assignment Commissioner, after reviewing the civil calendar and ascertaining the availability of the parties, will set the case for hearing on the issue of damages.

Original signed by John R. Hess
John R. Hess, Judge

cc: B. Michael Rauh, Esq.
Attorney for Plaintiff
Landis, Cohen, Singman and Rauh
1910 Sunderland Place, N.W.
Washington, D.C. 20036

Stuart H. Robeson, Esq.
Attorney for Defendant
1823 Jefferson Place, N.W.
Washington, D.C. 20036

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

MARGARET D. LEE

v.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Civil Action No. 5915-72

ORDER

This matter came on for hearing before the Court on the motion of plaintiff, Margaret D. Lee, for partial summary judgment as to liability, and the motion of the defendant, 1901 Wyoming Avenue Cooperative Association, for summary judgment. Upon consideration of the motions, the exhibits, the points and authorities in support thereof and in opposition thereto, and the arguments of counsel, and it appearing to the Court that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment as to liability as a matter of law,

It is by the Court this 16th day of January, 1974,

ORDERED, that the motion of plaintiff, Margaret D. Lee, for partial summary judgment as to liability be, and the same hereby is, granted, and that the motion of the defendant, 1901 Wyoming Avenue Cooperative Association, for summary judgment, be, and the same hereby is, denied.

FURTHER ORDERED, that the motion of plaintiff to strike defendants "Additional Points and Authorities in Support of Defendant's Renewal of Motion for Summary Judgment" be, and the same hereby is, denied.

FURTHER ORDERED, that the case be scheduled for hearing on the issue of damages without undue delay.

Original signed by John R. Hess

John R. Hess, Judge

cc: B. Michael Rauh, Esq.
Attorney for Plaintiff

Stuart H. Roberson, Esq.
Attorney for Defendant

RARY,
PREME COURT, U. S.

MAR 15 1974

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

No. 73-1264

BETTY M. ALLEN a/k/a BETTY J. MINDER
and
RICHARD P. ALLEN

Petitioners,

v.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

STUART H. ROBESON
1828 Jefferson Place, N.W.
Washington, D.C.
659-2720

Attorney for Respondent

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

	Page
JURISDICTION	1
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	4
CONCLUSION	9
APPENDIX	1a

TABLE OF AUTHORITIES

Cases:

Brooking v. Lemon, 96 A.2d 849 (1953) 8

Chesapeake & Ohio Canal Co. v. Ray, 101 U.S. 522 8

District of Columbia v. Camden Iron Works, 181 U.S. 453, 45L.Ed. 948 8

Hart v. Chenner, 178 A.2d (1962) 8

Haynes v. D.C. 202 A.2d 919 8

Justice Court Coop. v. Sandow, 270 N.Y.2d 829 8

Lee v. 1901 Wyoming Avenue Coop. Association, CA No. 5915-72 in Superior Court for the District of Columbia, not reported 8

1901 Wyoming Avenue Coop. Association v. Betty M. and Richard P. Allen, CA No. 5670-71 in Superior Court for the District of Columbia, not reported 4

1901 Wyoming Avenue Coop. Association v. Lee, CA No. 3669-71 in Superior Court for the District of Columbia, not reported 4

Richardson v. Flood, D.C. App. 190 A.2d 259 8

Shipp v. Weaver, 75 A.2d 925 (1950) 8

Soffas v. Eston, 80 U.S. App. D.C. 306, 152 F.2d 682 8

Statute:

28 U.S.C. 1254(1) 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1264

BETTY M. ALLEN a/k/a BETTY J. MINDER
and
RICHARD P. ALLEN

Petitioners,

v.

1901 WYOMING AVENUE COOPERATIVE ASSOCIATION

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

JURISDICTION

28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the respondent has the right to enforce the by-laws, rules, and regulations of the Association, under the terms of the Mutual Ownership Contract?

2. Whether a reasonable surcharge for subleasing constitutes an abridgement of equity rights guaranteed by said contract?

3. Whether the respondent is liable in tort for malicious prosecution and abuse of legal process?

4. Whether the petitioners bilaterally waived or agreed to the levying of an appropriate rental surcharge by their contractual acceptance of the Association's Rules and Regulations; by their unsuccessful effort, while on the Board of Directors, to make the subleasing surcharge even more stringent; and by their initial compliance with the relevant regulation by making approximately twelve monthly payments of the rental surcharge, prior to discontinuing same?

STATEMENT OF CASE

The petitioners are owners of a cooperative apartment in the respondent's 1901 Wyoming Avenue Cooperative Association. At the time the petitioners purchased their apartment, they signed a Mutual Ownership Contract which allowed them to "sublease (their) dwelling, provided that (their) tenant be first approved by the directors of the Association" (Pet. App. 2, paragraph 7, page 17). Likewise, in this same Mutual Ownership Contract, the petitioners agreed to "abide by the Rules & Regulations of the Association" (Pet. App. 2, paragraph 13, page 18). Also, the By-laws of this Association and the Application for the transfer of this apartment to the petitioners required them to abide by the By-laws and all Rules and Regulations; and this is spelled out "as a condition of membership" in the By-laws (Pet. App. A3, Article 5, Section 4, Page 21 and App. 1, page 15).

On April 30, 1959, the Association adopted a regulation, at a special meeting of its membership, whereby any member who would rent his or her apartment would have to pay a monthly surcharge of 75¢ per $1,000 of original valuation. The petitioners purchased their apartment on April 15, 1964, approximately five years after the above

regulation was adopted by the members of the Association (Pet. App. 10, page 39). The original valuation of their apartment was $10,500, so that their rental surcharge would be $7.88 per month. The total amount due at the time the lower court rendered its judgment against them was only $133.96 (Pet. App. 10, pages 39-40).

In addition to the above-mentioned basic surcharge, the Association in 1965 levied an escalator provision, whereby the monthly rental surcharge would be raised to 50% of the monthly operating charge if an apartment were rented for more than three years. At the time the original Complaint was filed, the petitioners were being billed for only the basic rental surcharge, inasmuch as their apartment had been rented for several months less than three years. However, due to an administrative error while the Complaint was being prepared, the rental period was erroneously computed as having started more than three years previously, and this erroneous computation was incorporated in paragraphs 3 and 4 of the original Complaint. The respondent made a similar administrative error in preparing a Complaint against another member of the Association who had likewise seen fit to refuse to pay the rental surcharge, despite prolonged and patient efforts on the part of the Board of Directors to have both refractory members live up to their contractual obligation in this matter. Upon becoming cognizant of these parallel administrative errors, the respondent endeavored to amend its Complaint so as to charge the delinquent members for having "failed to pay the appropriate rental surcharge," which in both cases obviously referred to their failure to pay the basic rental surcharge of 75¢ per $1,000 of original valuation. The diverse results of this double effort on the part of the respondent to amend the original Complaints will be discussed below, inasmuch as the petitioners rely heavily

on the parallelism between these two efforts and the allegedly contradictory judicial decisions connected therewith. (Pet. App. 6, page 29 & 30; page 10 of Petitioner's Brief, III Consequence).

The petitioners rented their apartment from July 15, 1969 to December 15, 1971. They paid this monthly rental surcharge from July 15, 1969 to July 15, 1970 (12 months); they have not paid it since then (Pet. App. 10, pages 39-40).

ARGUMENT

The petitioners claim that the Supreme Court should take cognizance of this case because lower trial courts have taken opposite positions on this and the allegedly identical case mentioned above. This argument runs throughout the brief of the petitioners as a persistent refrain, and it is imperative that their allegation of identicity in this matter be rebutted *ab initio*. The simple fact is that Judge Tim Murphy, in *1901 Wyoming Avenue Cooperative Association v. Lee* (CA No. 3669-71), in the Superior Court of the District of Columbia (Pet. App. 8), refused to grant the respondent's motion to amend its Complaint, on the score that its counsel had deliberately chosen this approach by way of a "tactical trial decision." On the other hand, Judge W. Byron Sorrell, in *1901 Wyoming Avenue Cooperative Association v. Betty M. and Richard P. Allen* (CA No. 5670-71), in the Superior Court of the District of Columbia, granted the respondent's motion to amend its Complaint (Pet. App. 44), thereby permitting trial on the merits of the basic rental surcharge. As a result, Judge Murphy's ruling as to the unacceptability of the *escalator* rental surcharge (50% of the monthly operating charge, $42 for the Allen apartment), was by no means in conflict with Judge Sorrell's ruling as to the acceptability of the *basic* rental surcharge

(less than 10% of the monthly operating charge, or $7.88 for the Allen apartment). The obvious difference is simply that Judge Sorrell ruled that the 10% basic rental surcharge is reasonable, while Judge Murphy ruled that the 50% escalator rental surcharge is unreasonable. The two rulings differ in substance as well as degree—a point which was conveniently overlooked by the petitioners in alleging that they are "identical" cases. It should be noted that the respondent complied with Judge Murphy's ruling and rescinded the escalator surcharge, whereas, pursuant to Judge Sorrell's finding, as sustained on appeal, the basic surcharge continues in effect. Incidentally, this is quite in keeping with Judge Murphy's specific collateral finding that the intent of his ruling was to disallow only the escalator surcharge, since he specifically affirmed that "any other charges remain unimpaired" (Clarifying Order in CA No. 5669-71, dated April 17, 1972 (Rep. App. A)).

It is respectfully suggested that, far from being "almost identical," the above-cited cases differ essentially, since the respective rental surcharges which were adjudicated therein differ as between 50% and less than 10% of the monthly operating charge. The respondent confesses that it is somewhat shocked to read the allegation (on page 6) that its initial Complaint, incorporating the above-described administrative error, was "maliciously designed to obfuscate the issues involved and prejudice the court decision," contrary to the facts as outlined above. Incidentally, the petitioners should well have realized that this was a simple administrative error, since the entire tenor of the prolonged negotiations to achieve amicable settlement of this dispute, prior to the institution of legal action, was related solely to resumption of payment of the basic rental surcharge which they had ceased paying.

Further, it is difficult to perceive how the levying of such a minor surcharge could be accurately described as a "coercive attempt" by the respondent "to extort money from" or "intimidate" the peitioners. As to the alleged violation of the contractual right of the petitioners to sublease their apartment, subject only to the Association's approval of their prospective tenant, the levying of a small surcharge in the event of such rental would not only appear to be nonviolative of their contractual right but fully in conformity with the established practice of rental management in this vicinity.

The respondent is particularly concerned about the manner in which the petitioners have impugned the integrity of the trial judge in the lower court, as well as of the appellate judges. On page 7 of their Petition, they blatantly accuse Judge Sorrell of a number of judicial improprieties, with the clear implication that he was prejudiced in favor of the respondent. In addition, they accused him (Pet. p. 10) of failing to recognize or acknowledge Mrs. Allen's physical, mental, and monetary losses, including the loss of her tenants because of alleged harassment by the respondent. Further, the petitioners apparently regard the D.C. Court of Appeals as having wronged them by denying their Petition for Rehearing (Pet. p. 8) "without *explanation* or *opinion* in support of the decision" (emphasis in original). Of lesser moment, but in the same vein, the petitioners appear to be piqued that their Petition for Rehearing was denied "not by a Judge of the Court buy by a Clerk of the Court." In view of the fact that the petitioners are acting *pro se* in this case, a certain amount of indulgence may be called for because of their understandable failure to realize how a Clerk of the Court may properly act for a Judge *per curiam*.

Perhaps the most serious flaw in the Petition for Writ of Certiorari is the expectation that this question is "particularly important for a Supreme Court decision because of diametrically conflicting decisions made on an identical issue before inferior courts" (Pet. p. 3). As noted above, the "conflicting" decisions were on substantially disparate issues in the well-trodden field of contract law, so that no interposition by the Supreme Court would appear to be called for in this matter. Further, it is absurd to regard this case as involving a violation of Article IV of the Bill of Rights, since there is no scintilla of evidence regarding "unreasonable search and seizures of personal property" by the respondent (Pet. p. 5). In addition, it is difficult to perceive how the Supreme Court should take cognizance of this case in order to protect "the equity rights of individual owners against the abuse of power by cooperative or condominium management" (Pet. p. 4); no evidence whatsoever has been adduced to establish improper motivation on the part of the voluntary and unpaid members who generously serve on the Association's Board of Directors. In fact, the respondent Association depends on the collective efforts of its fifty-seven members to run and maintain this cooperative building and to conduct the Association's affairs without pay. How else could a cooperative apartment be run? The unavailability of absentee owners to participate in the active operation of the Association deprives it of their cooperative services and imposes an inequitable burden upon the others who must serve as watchdogs for their absent associates. Thus, the petitioners should not complain of the modest rental surcharge, particularly inasmuch as they are undoubtedly making a substantial profit from subleasing their apartment.

The petitioners also depend on the ruling of a lower court in the case of *Lee v. 1901 Wyoming Avenue Cooperative Association* (C.A. 5915-72), by Honorable John R. Hess. This is a case of breach of contract. It was for Partial Summary Judgment, and it is not a final judgment as of this date.

In short, the basic rental surcharge is "reasonable" and "modest," as held by Judge Sorrell, and it does not regulate the "mode" of living of the occupants (Pet. App. 10, pages 5-6). *Justice Court Coop. v. Sandow*, 270 N.Y.2d 829.

Since the petitioners made twelve monthly payments on this surcharge, it would appear that they have waived any objection to this regulation. *District of Columbia v. Camden Iron Works*, 181 U.S. 453, 45 L.Ed. 948 and *Chesapeake and Ohio Canal Co. v. Ray*, 101 U.S. 522.

The petitioners claimed that the respondent is liable in tort for malicious prosecution and abuse of legal process (Pet. App. 7, pages 33-34). Their suit is based on *one* civil suit, not *two*. In *Brooking v. Lemon*, 96 A.2d 849 (1953), the court said:

> "It being settled in this jurisdiction that one who *twice sues* another maliciously and without probable cause is responsible to him in damages: *Soffas v. Eston*, 80 U.S. App. D.C. 306, 152 F.2d 682 . . . " (emphasis added).

This case should not be reversed unless "the judgment is plainly wrong or without evidence to support it." D.C. Code (1973), Title 17-305(a); *Richardson v. Flood*, D.C. App. 190 A.2d 259; *Hart v. Chenner*, 178 A.2d (1962); *Shipp v. Weaver*, 75 A.2d 925 (1950); *Haynes v. D.C.*, 202 A.2d 919.

CONCLUSION

This case does not involve a federal question of substance. It is not a federal statute. It is only an unimportant question of a "modest" surcharge on a cooperative apartment when the owner wants to rent. There is no conflict in the decisions of two different court of appeals. The most is a difference of opinions of two trial judges; one case (not a final decision) was distinguished by the trial judge in the case at bar, which has been sustained on appeal.

The petitioners have not cited any decisions of the U.S. Supreme Court that are in conflict with the opinion of the lower Court.

This case does not encompass any imperative public importance as to justify the acceptance of this case. It involves a judgment of only $133.96 (Pet. App. 10, page 45).

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

STUART H. ROBESON
1828 Jefferson Place, N.W.
Washington, D.C. 20036
Phone (202) 659-2720

Attorney for Respondent

APPENDIX A

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

1901 WYOMING AVENUE COOPERATIVE
ASSOCIATION

v. Civil Action No. 5669-71

MARGARET D. LEE

CLARIFYING ORDER

Plaintiff herein has filed a motion to clarify the Court's order of March 8, 1972, asserting that it is unclear which particular rental surcharge has been held to be unenforceable.

Having reviewed the record herein, the Court reaffirms that Order as relates to the 50% additional rental surcharge passed on July, 1965. That is the only surcharge challenged by defendant in her motion for summary judgment. *Therefore, any other charges remain unimpaired.*

SO ORDERED.

Tim Murphy, Judge

April 17, 1972

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were mailed to Stuart H. Robeson, Esq., 1828 Jefferson Place, N.W., Washington, D.C. 20036; and Michael Rauh, Esq., 1910 Sunderland Place, N.W., Washington, D.C. 20036; this 17th day of April, 1972.

Tim Murphy, Judge